No. 75-657

IN THE

Supreme Court of the United States

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October Term, 1975

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioners,

v.

PETER J. BRENNAN, SECRETARY OF LABOR,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioners,

v.

PETER J. BRENNAN, SECRETARY OF LABOR, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Local 3489, United Steelworkers of America, AFL-CIO and United Steelworkers of America, AFL-CIO pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 520 F.2d 516 and is reproduced in the Appendix to this petition at App. 1a-15a.[1] The opinion of the district court is unreported and is reproduced in the Appendix to this petition at App. 17a-22a.

JURISDICTION

The judgment of the court of appeals was entered on August 5, 1975 (App. 16a). This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether a union's rule requiring that a candidate for local union office have attended half (½) the regular monthly meetings held in the three years preceding nominations is a "reasonable qualification" for candidacy within the meaning of the Labor Management Reporting and Disclosure Act of 1959, where attendance is not difficult for any member and any member may qualify simply by devoting two hours every other month to union affairs.

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1. The Appendix to this petition is separately paginated and is referred to herein as "App."

STATUTE INVOLVED

The statute involved is the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. §401, *et seq.*, in particular, Section 401 of that Act, 29 U.S.C. §481 which, in relevant part, reads as follows:

"TERMS OF OFFICE; ELECTION PROCEDURES

* * *

"Sec. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * *

"(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. . . . The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title."

STATEMENT OF THE CASE

The Secretary of Labor and the United Steelworkers of America, AFL-CIO (herein called "Steelworkers") have been engaged in continuous litigation over the validity of the Steelworkers' meeting attendance rule ever since the 1967 elections for local union officers. With each new round of Steelworker Local elections — more than five thousand conducted every three years — a spate of new lawsuits emerges. The present action, involving Steelworker Local 3489, is part of the crop which grew out of the 1970 elections.

The case began when, following the June 22, 1970 election of local union officers and after exhausting internal union remedies, one of two defeated candidates for president of the Local, though himself eligible, filed a complaint with the Secretary of Labor asserting, *inter alia,* that the meeting attendance rule was unreasonable.[2] Thereafter and within the time permitted by the statute, the Secretary instituted this action against Local Union 3489 under Title IV of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA) seeking to set aside the June 22, 1970 election. The complaint alleged that the election was void because the Local had applied the meeting attendance rule and because of a "secret ballot" violation, not material here. The Steelworkers, as parent international union, intervened as a party defendant.

The membership of Local Union 3489 is composed of production and maintenance employees of the Stran

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2. In 1973, the complainant won the presidency of Local 3489 in an election conducted under the Steelworkers' meeting attendance rule (App. 3a).

Steel Corporation in Terre Haute, Indiana. At the time of the June, 1970 election, there were approximately 660 members employed at the plant (App. 2a). The Local's meetings were held in a union hall located three miles and within a ten-minute automobile ride from the plant. In conducting the election, Local 3489 applied an eligibility requirement prescribed by the Steelworkers' constitution and applicable to all Steelworker Locals. Under that requirement, no member is eligible to hold local union office unless:

> "He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the *** election, unless his Union activities or working hours prevented his attendance" (App. 19a).

There were twenty-three members in the Local who were eligible to hold office. Of these twenty-three, less than half were incumbent officers. Two nominees were informed that they were ineligible because they had not attended a sufficient number of union meetings. Six former officers won reelection either to the same or some other office. Non-incumbents were elected to the important offices of Vice President, Recording Secretary and Treasurer and to one minor office.

Upon a largely stipulated record, the district court held that the Steelworkers' meeting attendance rule was a reasonable qualification for holding office within the meaning of §401(e) of the LMRDA. In doing so, it agreed with four district courts and with a decision of the United States Court of Appeals for the Sixth Circuit. Without exception, all had declared the Steelworkers' meeting attendance rule a reasonable requirement under the statute. The district court readily distinguished

REASONS FOR GRANTING THE WRIT

The candidate qualification issue involved in this case raises a question of national importance in the administration of LMRDA on which this Court previously granted certiorari in *Hodgson* v. *Local 6799, United Steelworkers of America,* 403 U.S. 333 (1971) but did not decide there because of its holding on the threshold issue of exhaustion under the Act. A conflict over the candidacy issue has now developed between the circuits. Thus, the Seventh Circuit's instant opinion with respect to the Steelworkers' meeting attendance rule is directly contrary to the Sixth Circuit's decision in *Brennan* v. *Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973). Moreover, this division reflects a fundamental difference over the application of the election provisions of the Act and over the meaning of this Court's decision in *Wirtz* v. *Hotel, Motel & Club Employees, Local 6,* 391 U.S. 492 (1968). We briefly expand on these points below.

The Steelworkers' meeting attendance candidate eligibility requirement is imposed by the International's constitution on each of its 5,200 Locals. The rule is thus national in scope and reaches approximately 1,400,000 Steelworker members. Meeting attendance rules are not unique to the Steelworkers, however. Indeed constitutions of international unions having twenty-five per cent of all of America's union members impose meeting attendance requirements as a candidacy qualification for local union office and countless local unions who have been left the option by their international are likely to have adopted such a requirement on their own. The Secretary of Labor himself has in the past urged this Court to decide the substantive issue raised by the meeting attendance qualification "[b]ecause of its national importance in the administration of the Act . . ." and because it involves basic principles under the Act.[4]

The rule in its present form was first applied in the 1967 Steelworker local union elections. It has since become the largest single source of litigation under the Act. Moreover, given the Secretary's case-by-case approach, and now that there is one decision which finds the rule invalid, it is reasonable to expect a deluge of lawsuits to descend upon the courts after the 5,200 upcoming Steelworker local union elections.

In early 1968, the Secretary instituted eight separate lawsuits in cases growing out of the 1967 elections. In each he injected a challenge to the meeting attendance rule, even where no member had protested the rule internally. Accordingly, when the meeting attendance rule first came before this Court in *Local 6799,* it came not alone but with another important issue—exhaustion. Moreover, once this Court ruled that exhaustion requirements barred the Secretary from litigating the matter, it had no reason to reach the question of the reasonableness of the rule itself. 403 U.S. at 341.

In the meantime, both before and after *Local 6799,* the courts which did reach the merits were unanimous in upholding the Steelworkers' meeting attendance qualification.[5] *Local 5724* was the first court of appeals case

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4. Pages 14-15 of the government's Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit filed in *Hodgson* v. *Local 6799, United Steelworkers of America,* 403 U.S. 333 (1971).

5. *Brennan v. Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973); *Shultz v. Local Union 6799,* 71 LRRM 2820 (C.D. Cal. 1969), *aff'd on*

describing the matter.[6] The Secretary of Labor, however, did not seek certiorari from the Sixth Circuit's decision upholding the reasonableness of the rule but continued instead to litigate the issue in other cases including the present one.[7] Now, with the Seventh Circuit's decision, there is a direct conflict between circuits.

The Sixth Circuit, in declaring the meeting attendance requirement reasonable in *Local 5724,* looked to the real cause of the disqualification. Under the Steelworkers' rule, it was the member himself. To qualify, all any member had to do was devote about two hours to union affairs every other month—attending a regularly scheduled meeting in a union hall just a few minutes drive from the plant (App. 31a-32a). This stood in marked contrast to the restriction in *Hotel Employees* which limited eligibility to members who had previously held office. Under such a requirement, members who wanted to qualify were *prevented* from doing so.

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other grounds, 426 F.2d 969 (9th Cir. 1970), *aff'd sub nom., Hodgson v. Local 6799, United Steelworkers, of America,* 403 U.S. 333 (1971); *Shultz v. Local 1299, United Steelworkers of America,* 324 F.Supp. 750 (E.D. Mich. 1970), *aff'd in part, sub nom., Hodgson v. Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971); *Shultz v. Local 1150, United Steelworkers of America,* 75 LRRM 2869 (S.D. Ind. 1970), *vacated on other grounds* (No. 71-1467, 7th Cir. July 1971, unreported).

6. Two years earlier, the same circuit had turned down the Steelworkers' plea for a ruling on the merits. *Hodgson* v. *Local 1299, United Steelworkers of America,* 453 F.2d 565, 575 (6th Cir. 1971).

7. Another pending case is *Brennan* v. *Local 5702, United Steelworkers of America,* Civ. Act. No. 73-3272 (E.D. La.) where both parties have filed motions for summary judgment.

> "Unlike the *Hotel Employees'* bylaw, the Steelworkers' rule disqualified no one. Every member can qualify by the relatively unburdensome step of devoting a few hours per month to the affairs of his Union. Steelworkers disqualify themselves as a matter of free choice by their unwillingness to devote a few hours per month to Union affairs. . . . every member could have qualified merely by attending one-half of the meetings" (App. 33a).

Of course, if the rule was such that eligibility was beyond the members' control, as in the case of the *Hotel Employees* prior office holding requirement, *and* the rule's impact was to limit eligibility to a handful of candidates, then it would not pass muster under the Sixth Circuit's construction of the statute.[8] Put another way, as the Sixth Circuit reads *Hotel Employees,* that case does not establish a blind doctrine under which once a magic percentage of members is rendered ineligible, an otherwise valid eligibility requirement suddenly becomes unlawful even though the requirement serves legitimate union objectives and, by itself, disqualifies no one (App. 33a).

Unlike the Sixth Circuit in *Local 5724,* the Seventh Circuit in the present case, draws no distinction between rules under which members disqualify themselves by failing to take unburdensome steps, and rules under which eligibility is beyond the member's control. In the

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8. Statistical impact does not matter where eligibility is in the hands of the members themselves. Thus, in upholding the Steelworkers' rule, the Sixth Circuit assumed that as many as 93 per cent of the members were ineligible (App. 32a).

Seventh Circuit's view, *Hotel Employees* means that *any* rule which disqualifies 96.5 per cent of the local union's membership cannot be deemed a reasonable qualification under the statute.[9]

> "Later in the *Hotel Employees* opinion, Justice Brennan observed that because the objective of Title IV of the Act (29 U.S.C. §§481-483) is to insure free and democratic elections, it was plain that a candidacy limitation rendering 93% of union members ineligible for office 'can hardly be a reasonable qualification.' 391 U.S. at 502. Here the meeting attendance rule disqualified 96.5% of the Local Union's membership from office, so that it cannot be deemed a reasonable qualification either. We need not decide whether the 18 of 36 rule is *per se* unreasonable because its effect of severely restricting the number of potential candidates for union office shows it to be clearly unreasonable in this case.
>
> * * *
>
> "Of course, if a very high percentage of the membership is disqualified from seeking union office by a rule, as was the situation here, that fact alone may justify a finding that the rule is unreasonable" (App. 7a-8a).

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9. If, as the Seventh Circuit holds, percentages are determinative, the Steelworkers are confronted by an impossible administrative burden. There is no feasible way the union can establish in advance which of its 5,200 Locals may apply the rule and which may not. The adoption of an arbitrary minimum percentage eligibility figure will leave the Steelworkers no choice but to abandon the meeting attendance rule altogether at a sacrifice of the substantial values which it believes are served by the rule.

In addition to the fundamental difference described above, the Sixth Circuit and Seventh Circuits are also at odds over subsidiary issues. One such issue involves the purposes of the meeting attendance rule. The Sixth Circuit readily endorsed the trial court's factual finding that the rule was adopted for the following purposes:

> "'(1) To encourage broad base participation in the affairs of the union, and to obtain as large a turnout as possible at the meetings at which the union's business is conducted.
>
> '(2) To attempt to assure that candidates have demonstrated an interest in and are likely to be concerned with the problems of the union.
>
> '(3) To attempt to insure that candidates have participated in the affairs of the union and are, therefore, sufficiently familiar with its problems to be able more intelligently to fulfill the numerous responsibilities and duties attendant to holding office'" (App. 37a-38a).

The Seventh Circuit, though presented with similar findings by the trial court,[10] treated them as arguments rather than as findings of fact and rejected them on the ground that similar contentions had been rejected in *Hotel Employees*. The court of appeals further discounted the purposes of the rule, observing that based on facts in evidence, it would conclude that the rule had failed to

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10. "The meeting attendance qualification on the other hand is designed to (1) insure that candidates have demonstrated an interest in union affairs prior to election and are therefore likely to continue to do so, if elected, and (2) that candidates will, if elected, be able to more knowledgeably fulfill their duties" (App. 20a-21a).

achieve one of its goals, increased meeting attendance, and was *unnecessary* to *insure* another, competent union leadership (App. 11a).

The other matter which divided the circuits was the Secretary's interpretive manual. The Sixth Circuit concluded that the Secretary's position in the lawsuit was not consistent with the relevant provisions of his own published LMRDA interpretive manual in effect at the time the challenged election was conducted. That manual generally supported qualifications designed to assure that candidates had participated in union affairs and specifically sanctioned fifty per cent attendance requirements over one and two year periods. It was difficult for the Sixth Circuit "to see any significant difference for a meeting attendance requirement covering a period of three years. These regulations, although later amended by the Secretary, were in effect when the dispute here arose" (App. 35a).

The Seventh Circuit, however, was unpersuaded by this argument. The short answer, said that court, was that the manual was *now* obsolete, having been revised by the Secretary in 1973. In any event, the Steelworkers' three-year rule was fifty per cent harsher as to the number of meetings a member must attend and as to the time limitations imposed on his decision to seek office. A two-year rule, concluded the court, does not determine the reasonableness of a three-year rule (App. 9a-10a).

Needless to say, petitioners agree with the Sixth Circuit's application of the statute and with its analysis of this Court's opinion in *Hotel Employees*. We also agree with the decisions of those district courts which have actually passed upon the merits of the meeting attendance rule and in each case, found it a reasonable require-

ment.[11] But whether one sides with the Sixth Circuit or with the Seventh Circuit, all must agree that so long as the conflict between them remains unresolved, the Steelworkers, in administering 5,200 forthcoming local union elections and the Secretary of Labor, in administering the election provisions of the Act, both face an impossible dilemma.

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11. See cases cited in footnote 5. One district court, in *dictum* would have found the rule unreasonable. *Brennan* v. *Local 3911, United Steelworkers of America,* 372 F.Supp. 961 (N.D. Ill. 1973), cited with approval in *Brennan* v. *Local Union No. 639, International Brotherhood of Teamsters,* 494 F.2d 1092, 1099-1100 (D. C. Cir. 1974).

CONCLUSION

For the reasons set forth hereinabove, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 74-1639

PETER J. BRENNAN, Secretary of Labor,
Plaintiff-Appellant,

v.

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana—No. TH 70 C 117
JAMES E. NOLAN, *Judge.*

HEARD APRIL 3, 1975—DECIDED AUGUST 5, 1975

Before CUMMINGS and PELL, Circuit Judges, and PERRY, Senior District Judge.*

CUMMINGS, Circuit Judge. The Secretary of Labor filed this action for declaratory and injunctive relief pursuant to Title IV of the Labor Management Reporting and Disclosure Act ("Act" or "LMRDA"), 29 U.S.C. § 401 *et seq.* The complaint alleged that a June 22, 1970, election of officers of defendant union[1] was void because

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*Senior District Judge J. Sam Perry of the Northern District of Illinois was sitting by designation.

1. Local 3489, United Steelworkers of America, AFL-CIO. Subsequently the parent international union, United Steelworkers of America, AFL-CIO, intervened as an additional defendant.

the union had failed to elect its officers by secret ballot and had imposed an unreasonable candidacy qualification, thus violating Sections 401(b) and 401(e) of the Act.[2] The district judge disagreed and dismissed the complaint. We reverse.

The membership of the Union is composed of the production and maintenance employees of the Stran Steel Corporation of Terre Haute, Indiana. At the time of the election, there were 660 members in good standing eligible to vote. However, pursuant to rules of the Local Union and its parent, the following requirements were established for eligibility for office in the Local:

1. Membership in good standing for 24 months immediately preceding the election;
2. Employment in a place within the jurisdiction of the Local Union;
3. Attendance at least at 18 of the 36 regular monthly meetings preceding the election unless union activities or working hours prevented attendance.

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2. Section 401(b) (29 U.S.C. § 481(b)) provides:

"Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing."

In pertinent part, Section 401(e) (29 U.S.C. § 481(e)) provides:

"In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof."

The third requirement was dictated by the following provision of the International Union's constitution:

"No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless

* * *

"He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the * * * election unless his Union activities or working hours prevented his attendance." (Article VII, Sec. 9.)

From June 1967 to May 1970, the Local Union conducted 36 monthly meetings, with an average attendance of 47 members per meeting. As a result of the meeting attendance rule, 96.5% of the Local Union's membership was ineligible to hold office. Ten of the 23 members who were found eligible were incumbent office holders. Following the May 17, 1970, nomination meeting, two of the nominees were informed that they were ineligible for union office because they had attended an insufficient number of union meetings. Ultimately, there were only 13 candidates on the ballot running for ten offices and six of these candidates ran unopposed.

After the June 22, 1970, election of officers, Bernard Frye,[3] a defeated candidate for the presidency, filed a

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3. Frye was ultimately elected president of the Local Union on June 12, 1973, and at the time of the filing of the briefs here was serving in that capacity. Although neither party has raised the question of moot-

protest with the Local Union, claiming that the meeting attendance rule was unreasonable and that the vote had not been by secret ballot. The Union denied his protest and he appealed to the International Union's executive Board. Because his protest was not acted upon by the Executive Board within three months (29 U.S.C. § 482 (a)(2)), Frye filed a written complaint with the Secretary of Labor, prompting the present litigation.

The district court filed an unreported memorandum opinion in favor of defendants. In its opinion, the court stated:

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ness on appeal or in the court below, the mere recitation of the fact that the complainant as to the 1970 election eventually won the office which he sought then and is now serving in that capacity is sufficiently suggestive of mootness problems to merit a brief discussion by this Court.

In *Wirtz v. Local 153, Glass Bottle Blowers Ass'n,* 389 U.S. 463, the Supreme Court held that where the Secretary of Labor has proved a Section 401 violation that may have affected the outcome of an election, an intervening unsupervised election for the same offices does not deprive the Secretary of the right to a court order voiding the challenged election and directing that a new election be held under his supervision. There appears to be no substantial reason for distinguishing this case on the grounds that the complainant himself has secured the office in the second election that he sought in the challenged election. Thus if the June 12, 1973, election was unsupervised, this case is on all fours with *Glass Bottle Blowers* and clearly not moot. Our review of the transcript of the hearing below leads us to believe that the Secretary did not supervise the June 12, 1973, election. It is therefore unnecessary to decide whether this case would be moot if a supervised election had been held since the challenged election. See *Brennan v. Silvergate District Lodge No. 50,* 503 F.2d 800, 803-804 (9th Cir. 1974).

> "The meeting attendance qualification * * * is designed to (1) insure that candidates have demonstrated an interest in union affairs prior to election and are therefore likely to continue to do so, if elected, and (2) that candidates will, if elected, be able to more knowledgeably fulfill their duties."

Therefore, the court concluded that the meeting attendance rule was a reasonable qualification within the meaning of Section 401(e) of the Act (note 2, *supra*). The court also held that the Union's failure to provide voting booths or other means of insuring secrecy during the voting did not violate Section 401(b) of the Act (*idem*), emphasizing that "the evidence did not indicate that the lack of a voting booth [subsequently acquired by the local union] or similar apparatus for secret voting may have affected the outcome of the election."

Reasonableness of Attendance Requirement

As noted, a member of the defendant union is not eligible for election to office unless he has attended 18 of the 36 regular monthly meetings preceding the election, unless union activities or working hours prevented attendance. This requirement must be tested in light of Section 401(e) of the Act, which makes "every member in good standing" eligible for office, subject to Section 504 of the Act "and to reasonable qualifications uniformly imposed." Section 504 prohibits members of the Communist Party and persons convicted of certain crimes from holding office unless certain conditions are met (29 U.S.C. § 504). This provision is not involved in this appeal. Further narrowing the issue, the Secretary does not seriously contend that the 18 of 36 rule was not uniformly applied. Thus the question before us is whether the meeting attendance rule is a reasonable qualification. We hold that it is not.

The construction of Section 401(e) was also before us in *Brennan v. Independent Lift Truck Builders Union,* 490 F.2d 213, 217 (7th Cir. 1974). Applying the admonition in *Wirtz v. Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492, 499, that "Congress plainly did not intend that the authorization in § 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach," we held that it would not be a reasonable qualification to bar a member from eligibility for office where he was discharged by an employer and was actively contesting the discharge.

In *Hotel Employees,* the Supreme Court struck down a union by-law which required major office-holders to be selected from members who had previously been office-holders. To support this conclusion, the Court relied on the legislative history of Section 401(e) and its wording that "every member in good standing shall be eligible to be a candidate and to hold office * * *." In so ruling, the Court stated:

> "This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499.[4]

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4. Note 8 has been omitted from the foregoing quotation; it cited 29 U.S.C. §§ 481 (e) and 411(a)(1) as provisions stressing members' freedom to nominate candidates.

Later in the *Hotel Employees* opinion, Justice Brennan observed that because the objective of Title IV of the Act (29 U.S.C. §§ 481-483) is to insure free and democratic elections, it was plain that a candidacy limitation rendering 93% of union members ineligible for office "can hardly be a reasonable qualification." 391 U.S. at 502. Here the meeting attendance rule disqualified 96.5%[5] of the Local Union's membership from office, so that it cannot be deemed a reasonable qualification either. We need not decide whether the 18 of 36 rule is *per se* unreasonable because its effect of severly restricting the number of potential candidates for union office shows it to be clearly unreasonable in this case. Furthermore, we note that of the 23 persons found to be eligible for office in the 660-person Local, ten were incumbent office-holders. Since Section 401(e) was intended to curb the possibility of abuse by an entrenched leadership, whether benevolent or not,[6] a restriction that results in almost half of those eligible to be candidates in a local of this size also being incumbent office-holders is surely suspect.

No particular percentage is accorded talismanic properties under the Act, so that the courts need not hold a union rule or combination of rules that fails to qualify such an arbitrary percentage of members as potential candidates *per se* unreasonable. Rather, the entire fact situation surrounding the election is to be examined in making the reasonableness determination.

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5. Of the Union's 660 members, one member was found eligible by a combination of meeting attendance and work credits, and 22 members were eligible by virtue of meeting attendance alone. This resulted in disqualifying 96.5% of the membership at this election.

6. *Hotel Employees, supra,* at 503.

See 29 C.F.R. § 452.38 (1974). Of course, if a very high percentage of the membership is disqualified from seeking union office by a rule, as was the situation here, that fact alone may justify a finding that the rule is unreasonable. As stated by Judge Tone in *Brennan v. Local 3911, United Steelworkers of America,* 372 F.Supp. 961, 967 (N.D. Ill. 1973), in view of its decision in *Hotel Employees,* "It seems apparent that the Supreme Court would not regard the Steelworkers meeting attendance requirement in its present form as a reasonable qualification."[7]

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7. In *Local 3911,* Judge Tone rendered judgment for defendant union because the plaintiff had not fulfilled the statutory intra-union exhaustion requirements. Because of the possibility of reversal by a reviewing court, the then district judge indicated how he would have ruled had he reached the merits. Finding the Supreme Court's *Hotel Employees* decision controlling, he held that the disqualification of 94.7% of the membership due to the 18 of 36 rule proved the rule unreasonable under Section 401(e). 372 F.Supp. at 967.

This facet of the decision in *Local 3911* was cited with approval in *Brennan v. Local Union No. 639, International Brotherhood of Teamsters,* 494 F.2d 1092, 1099-1100 (D.C. Cir. 1974), where the Court of Appeals for the District of Columbia affirmed the ruling of the district court that a meeting attendance requirement, which disqualified 97% of the membership from potential candidacy, could not be applied in a coming election. The court noted, but did not follow, the contrary view expressed in *Brennan v. Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973). Likewise, to the extent that *Local 5724* is inconsistent with our decision here (in *Local 5724* only 84.8% were disqualified by the 18 of 36 rule), we respectfully disagree with the Sixth Circuit. *Wirtz v. Local 153, Glass Bottle Blowers Ass'n,* 405 F.2d 176 (3d Cir. 1968), on remand from the Supreme Court, 389 U.S. 463, also appears to be in conflict with the

As the district court recognized, the LMRDA "was expressly enacted to curb the abuses of entrenched leadership." The defendants' meeting attendance rule perpetuates that abuse on the facts of this case. Because of the rule, members of the defendant Local who wish to run against incumbent officers might have to plan their campaigns 18 months ahead of the triennial elections in order to acquire 18 attendance credits. The need for such long-range planning would help to keep incumbent leaders in office. Unions undoubtedly have members with the requisite skills to hold office who have been sufficiently content with the directions taken by the union leadership for a time so that they felt no need to participate in routine meetings. Yet the 18 of 36 rule could prevent such members from becoming candidates even where they had been attending all the meetings and actively opposing the policies of the incumbent officers for over a year. Moreover, new members can qualify as members in good standing after two years. However, in order to challenge incumbents, they would have to attend 18 out of 24 meetings in those two years. Again this requirement favors incumbents.

Defendants argue that the Secretary's position contradicts a provision in his manual on the Act.[8] The

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Sixth Circuit, although in *Local 153* the facts involved a 75% attendance requirement over two years that disqualified 97% of the union membership, so that it might be distinguished on both the face of the rule and its practical effect from *Local 5724.*

8. LMRDA Interpretive Manual § 422.250, which provided:

> "PARTICIPATION IN UNION AFFAIRS"
>
> "Qualifications reasonably designed to assure that candidates have participated in the affairs

short answer is that the manual is now obsolete. See 29 C.F.R. § 452.38 (1974). In any event, the meeting attendance rule at issue here disqualified a very high percentage of the membership from holding office, thus constituting "special circumstances which cast doubt upon the validity and reasonableness" of the rule within the guideline expressed in that manual.

Defendants also rely upon Section 422.206 of the same obsolete manual which provided that a two-year-50% meeting attendance requirement was not unreasonable. The Secretary has explicitly abandoned this position in a new regulation which provides that the reasonableness of a meeting attendance rule must be determined "in the light of all the circumstances of the particular case, including * * * the number or percentage of members who would be rendered ineligible by its application." 29 C.F.R. § 452.38 (1974).[9] This regulation therefore reinforces the Secretary's policy typified by the filing of this lawsuit. Moreover, since the three-year rule can be 50% harsher as to the number of meetings which a member must attend to qualify for office and as to the time limitations imposed on his decision to seek office, the reasonableness of the two-year rule does not determine the reasonableness of the three-year rule.

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of the union and are sufficiently familiar with the industry in which the union operates would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications they are not to be considered unreasonable in themselves."

9. Subparagraph (b) of the same regulation summarizes several court decisions holding particular meeting attendance requirements to be unreasonable.

As in *Hotel Employees,* defendants attempt to defend their restriction by various argument in its favor. Thus they assert that they are attempting to insure that candidates have demonstrated an interest and concern in union problems and would be sufficiently familiar with them to fulfill the duties of office. Similar arguments were rejected in *Hotel Employees* where the Court noted that Congress designed Title IV "to curb the possibility of abuse by benevolent as well as malevolent entrenched leadership" (391 U.S. at 503). Defendants also assert that the meeting attendance rule fosters large turnouts at union meetings. However, according to the stipulation below, the average meeting attendance of this Union was 47 members out of 660. Such an attendance record would certainly not justify disqualifying 96.5% of members from holding office.

In the court below, the Secretary showed that only one other national union has specified a three-year period during which a member must attend a specified number of meetings to qualify for candidacy. Surely this statistic belies defendants' claim that the rule in question is necessary to assure competent union leadership. The right of members to nominate and vote for candidates of their choice (29 U.S.C. §§ 411(a)(1) and 401(e)) would be seriously diluted if this rule were to be sanctioned. In our view, it is not a "reasonable qualification" for office under Section 401(e) of the Act.

Maintenance of Secret Ballot

The Secretary also argues that this election should be set aside and a new supervised election ordered under Section 402(c) of the Act (29 U.S.C. § 482(c))

on the additional ground that this Local Union failed to elect its officers by secret ballot in violation of Section 401(b) of the Act (note 2, *supra*). As defined in Section 3(k) of the Act:

> " 'Secret ballot' means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election * * * which is cast in such a manner that the person expressing such choice *cannot be* identified with the choice expressed." (Emphasis added. 29 U.S.C. § 402(k).)

Under these statutory provisions, unions must run elections that conform to the democratic principles embodied in the secret ballot mandate. *Wirtz v. Local 153, Glass Bottle Blowers Ass'n, supra* note 1, at 471-472.

This election was conducted in a 60' x 20' room. Several small adjacent rooms were not used, although available. A small table for marking ballots was placed three feet in front of an elevated officers' bench. Two members of the Election Committee were present throughout the 6:00 a.m. to 6:00 p.m. election. Most of the voting occurred during the last two hours of the day, when the voters were "jammed together * * * elbow to elbow." Up to 50 voters were in the room at one time. Many voters marked their ballots at the aforesaid table and could see each other's ballots as they were marked. Others marked their ballots against the walls, and their markings could also be observed by voters several feet away. No one was seen carrying a ballot to the back of the hall to vote, and some members deliberately "flaunted their votes." There was no encouragement of any members to take steps to prevent others from seeing their ballots. Such loose polling procedures

violate the secret ballot requirement of the Act. *Hodgson v. United Mine Workers of America,* 344 F.Supp. 17, 30 (D.D.C. 1972). There was no observation of the requirement of Section 3(k) that votes be cast in such a manner that "the person expressing [his] choice cannot be identified with the choice expressed."

Defendants claim that the Secretary's position with respect to ballot secrecy is inconsistent with his regulation on the subject. 29 C.F.R. § 452.97(a) (1774) provides:

> "A prime requisite of elections regulated by Title IV is that they be held by secret ballot among the members or in appropriate cases by representatives who themselves have been elected by secret ballot among the members. A secret ballot under the Act is 'the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice * * * cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.' [Quoting 29 U.S.C. § 402(k).] Secrecy may be assured by the use of voting machines or, if paper ballots are used, by providing voting booths, partitions, or other physical arrangements permitting privacy for the voter while he is making his ballot. The ballot must not contain any marking which upon examination would enable one to identify it with the voter. Balloting by mail presents special problems in assuring secrecy. Although no particular method of assuring such secrecy is prescribed, secrecy may be assured by the use of a double envelope system for return of the voted ballots with the necessary voter identification appearing only on the outer envelope."

On analysis, it is apparent that under this regulation a voting booth "or other physical arrangements permitting privacy for the voter" may be used to assure the secrecy of the ballot, but secrecy must be assured. Since the use of the secret ballot is mandatory and not optional, the arrangements for voting at the June 1970 election satisfy neither the statute nor the regulation.

Defendants' argument that every voter had an opportunity to make his ballot secret by going to an unpopulated area within the large room or to one of the small rooms or by guarding his vote from observation must fail. But see *Shultz v. Local 420, Aluminum Workers,* 74 LRRM 2281 (N.D. N.Y. 1970). The statutory mandate is for a vote that "cannot" be identified with the voter. In many cases, requiring a union member to make a great show of securing his secrecy may be tantamount to indicating his vote. The Act requires a mandatory secret ballot, not one permitting a voter to mark his ballot in secret with the danger of identification implicit in securing that secrecy.

In rejecting the Secretary's claim that the secret ballot requirement of the Act had not been observed, the district judge was especially motivated by the fact that "the evidence did not indicate that the lack of a voting booth or similar apparatus for secret voting may have affected the outcome of the election."[10] This was contrary to the holding in *Hotel Employees* that once a violation is established by a preponderance of the evidence, a *prima facie* case has been made that the outcome of

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10. Section 402(c) of the Act requires a new, supervised election if a violation of Section 401 (note 2 *supra*) "may have affected the outcome of an election" (29 U.S.C. § 482(c)).

the election was affected. See 391 U.S. at 505-509. According to our reading of the record, these defendants did not meet that *prima facie* case.

Fed. R. Civ. P. 52(a) provides that a district court's fact findings cannot be reversed on appeal unless found to be clearly erroneous. While this Court reverses the judgment of the court below, it is not necessary to hold any of the district judge's findings clearly erroneous. The basis for the reversal is legal rather than factual. Thus we accept both the district court's endorsement of the parties' stipulation and the facts as found by the district court after the hearing. We are overturning only the legal conclusions that the candidacy restriction was reasonable and that there was a secret ballot within the meaning of the Act.

The order of the district court is reversed with directions to enter judgment for the Secretary.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

Appendix.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

August 5, 1975
Before
Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. JOSEPH SAM PERRY, Senior District Judge*
No. 74-1639

PETER J. BRENNAN, Secretary of Labor, Plaintiff-Appellant, v. LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, Defendants-Appellees.	No. TH 70 C 117

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division, James E. Noland, Judge

Opinion by Judge Cummings

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Terre Haute Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, in accordance with the opinion of this court filed this date.

*Senior District Judge Joseph Sam Perry of the Northern District of Illinois is sitting by designation.

Appendix.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor [Successor to James D. Hodgson, Resigned] v. LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO	NO. TH 70-C-117

Memorandum Opinion

Plaintiff, the Secretary of the United States Department of Labor, instituted this action under Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) 29 U.D.C. § 401 *et seq.* The Court has jurisdiction over this action under 29 U.S.C. 482(b). The Secretary sought a judgment declaring the nominations and election conducted by defendant Local 3489, United Steelworkers of America, AFL-CIO, on May 17 and June 22, 1970, to be null and void, and directing that a new election be conducted for all offices of defendant Local under supervision of the Secretary of Labor. For the reasons stated herein, we find the requested relief to be unwarranted.

Local 3489 is an unincorporated association maintaining its principal office at 625 North 13th Street, Terre Haute, Indiana. The Local consisted in June 1970

of approximately 660 members employed by the Stran Steel Corporation at its Terre Haute plant. Local 3489 is, and at all times relevant to this action has been, chartered by and subordinate to the defendant United Steelworkers of America, AFL-CIO, an international labor organization engaged in an industry affecting commerce within the meaning of the Act.

Following the election of June 22, 1970, Bernard Frye, a member in good standing who had been nominated for the presidency, protested the nominating and election procedures to the Local and International. Subsequently on September 24, 1970, he filed a complaint with the Secretary of Labor asserting the same objections. Mr. Frye is currently president of the Local as the result of the June 1973 election. On the basis of Mr. Frye's complaint, the Secretary filed this action on November 23, 1970, pursuant to 29 U.S.C. 482.

The Secretary asserts that the nominating procedure employed by the Local violated Section 401(e) of the LMRDA, 29 U.S.C. 481(e)[1] in that through the imposition of an unreasonable candidacy requirement members in good standing were denied the right to be candidates for local union office and to support the candidates of their choice. The challenged candidacy require-

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1. Section 401(e) provides in pertinent part that:

"(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to Section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice. . . ."

ment is contained in Article VII, Section 9 of the International Constitution and provides in pertinent part that:

"No member shall be eligible for election as a Local Union officer or Grievance Committeeman unless

* * *

(c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June 1970, election, unless his Union activities or working hours prevented his attendance."

The Secretary also asserts that Local 3489 by its failure to provide voting booths or other means of insuring secrecy during the voting process, violated Section 401(b) of the LMRDA, 29 U.S.C. 481(b).[2]

Prior to the May 17 nominations the Local's Recording Secretary compiled a list of the names of 22 members eligible to hold local office. Of these, 10 were incumbent officers. Following the May 17 meeting, two of the members subsequently nominated were informed that they were ineligible for union office because they had attended an insufficient number of meetings.

It is the Secretary's position that a candidacy requirement under which in excess of 90% of the Local's members are ineligible for office is *per se* unreasonable under the Supreme Court's interpretation in *Wirtz v. Hotel, Motel & Club Employees Union, Local 6*, 391 U.S.

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2. Section 401(b) provides that:

"(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing."

492 (1968) of the "reasonable qualifications uniformly imposed" provision contained in Section 401(e).

Hotel Employees focused on a candidacy qualification which the Supreme Court characterized as "virtually unique in trade union practice." 391 U.S. at 505. The qualification then in question limited eligibility for major local union offices to union members who had previously held union elective office. The practical effect of this requirement was to restrict eligibility for office to those members who had the blessing of the entrenched administration party. The Court observed that the LMRDA was expressly enacted to curb the abuses of entrenched leadership, and in view of the practical effect of the restriction found the qualification unreasonable.

It is clear to the Court that the meeting attendance rule in the instant case stands upon an altogether different footing than did the previous office restriction considered in *Hotel Employees*. In *Hotel Employees* the control over qualification or disqualification of candidates was in the hands of an entrenched union leadership. Under the meeting attendance rule it is left to each member to decide whether or not he will qualify himself for union office by giving less than two hours of his time each month to union activity. Application of a strict percentage rule in determining the reasonableness of any given qualification does not distinguish between candidacy restrictions imposed by union leadership and restrictions brought about by the individual members. Further, the previous office qualification bears no necessary relationship to fitness for office. The meeting attendance qualification on the other hand is designed to (1) insure that candidates have demonstrated an interest in union affairs prior to election and are

therefore likely to continue to do so, if elected, and (2) that candidates will, if elected, be able to more knowledgeably fulfill their duties.

Based upon the foregoing, the Court concludes, as it has been concluded in the past by this Court and others, that the Steelworkers' meeting attendance rule is a reasonable qualification within the meaning of Section 401(e) of the LMRDA. *Brennan v. Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973); *Shultz v. Local Union 6799,* 71 LRRM 2830 (C.D. Cal. 1969), aff'd on other grounds, 426 F.2d 969 (9th Cir. 1970), aff'd sub nom., *Hodgson v. Local 6799, United Steelworkers of America,* 403 U.S. 333 (1971); *Shultz v. Local 1299, United Steelworkers of America,* 324 F.Supp. 750 (E.D. Mich. 1970), aff'd in part, sub nom., *Hodgson v. Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971); *Shultz v. Local 1150, United Steelworkers of America,* 75 LRRM 2869 (S.D. Ind. 1970), vacated on other grounds (No. 71-1467, 7th Cir. July 1971, unreported).

With respect to the Secretary's allegation that the election held on June 22, 1970 did not fulfill the secret ballot requirement contained in Section 401(b) of the LMRDA, the evidence at trial disclosed that in fact ample opportunity was given to the union members to vote in secret. The Union hall contained three rooms available for balloting. The largest of these, twenty by sixty feet in size, contained sixty to one hundred chairs and four tables available for marking ballots. A large amount of wall space could also have been used. Indeed there is nothing to indicate that voters could not have left the hall to mark their ballots as no restriction was placed upon them once they received their ballots. The

ballots themselves were small and could have been shielded by the voter's arm. From the evidence it appears that the balloting on June 22, 1970, was approximately as secret as it could have been made by the voting booth subsequently acquired by the Local. Most importantly, however, the evidence did not indicate that the lack of a voting booth or similar apparatus for secret voting may have affected the outcome of the election.

On the basis of the foregoing, the Court concludes that the requested relief is unwarranted. Judgment is now entered in favor of the defendants and against the plaintiff.

Findings of Fact and conclusions of law have not been separately stated, but are included in the body of the foregoing opinion in accordance with Rule 52(a) of the Federal Rules of Civil Procedure. Plaintiff's complaint is DISMISSED.

JAMES E. NOLAND
James E. Noland,
U. S. District Judge

DATE: April 30, 1974

No. 73-1171
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETER J. BRENNEN,
Secretary of Labor,
Plaintiff-Appellant,
v.
LOCAL 5724, UNITED STEELWORKERS OF AMERICA, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Defendants-Appellees.

APPEAL from the United States District Court for the Southern District of Ohio.

Decided and Filed December 19, 1973.

Before PHILLIPS, Chief Judge, and PECK and LIVELY, Circuit Judges.

PHILLIPS, Chief Judge. A United Steelworkers' rule provides that no member shall be eligible for election to a local union office unless he has attended at least one-half of the regular meetings of his local union during the previous 36 months. The issue presented on this appeal is whether this attendance requirement is a reasonable qualification uniformly imposed within the meaning of the Labor-Management Reporting & Disclosure Act of 1959, 29 U.S.C. § 481(e).[1]

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1. 29 U.S.C. § 481(e) provides in part:
"In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject

District Judge Joseph P. Kinneary held the rule to be valid. We affirm.

The Secretary of Labor filed this action challenging as null and void a Union election held in June 1967 by Local Union 5724, United Steelworkers of America, and seeking to have a new election conducted under his supervision. Jurisdiction is based upon 29 U.S.C. § 482.[2]

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to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * * The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter."

2. Section 402, 29 U.S.C. § 482, authorizes the Secretary of Labor to file suit to remedy any violation of § 401 if certain conditions have been met:

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title . . . .

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this sub-chapter has occurred and has not been remedied, he shall, within sixty days after filing of such complaint, bring a civil action against the labor organization . . . to set aside the invalid election, if any, and to direct the conduct of an election . . . under the supervision of the Secretary. . . .

The Union attendance rule, imposed by Article VII, § 9, of the International Steelworkers' Constitution, in relevant part is as follows:

> "No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless
>
> * * *
>
> "(c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1967, election, unless his Union activities or working hours prevented his attendance."

The facts are largely undisputed. In June 1967, Local 5724 had approximately 1,700 members comprised exclusively of production and maintenance employees at the Ormet Corporation plant in Hannibal, Ohio. The plant operated in shifts. About 800 employees worked the day shift (8 a.m. to 4 p.m.), but only about 439 of these employees were permanently assigned to this shift. Approximately 430 employees worked the 4 p.m. to 12 p.m. shift, 88 of whom were permanently assigned. About 370 employees worked from midnight to 8 a.m., and of these, 33 were permanently assigned to this night shift. Those employees who were not permanently assigned to a particular shift were rotated from one shift to another.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

* * *

(2) that the violation of section 481 of this title may have affected the outcome of an election, the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary . . . .

Local 5724 held regular meetings according to a set schedule at 4:30 p.m. on the second Thursday of each month at a union hall located in Clarington, Ohio. The union hall was eight miles from the plant and could be reached in a 15 minute automobile ride from the plant. The average length of each meeting was about two hours. For the 36 monthly meetings between June 1964 and May 1967, attendance varied from 11 to 117 members, with an average attendance of 45.

At the meeting on May 11, 1967, there were 42 nominations for nine local union offices. Nine of the nominations were declined. An election committee then determined whether the remaining 33 nominees were eligible for office. Under the International Constitution of the Steelworkers, there were three requirements for eligibility to run for and hold local union office; the member must (1) have been in continuous good standing for a period of 24 months immediately preceding the election, (2) have been employed in a plant or mill or other place within the jurisdiction of the local union, and (3) have attended at least 18 of the regular monthly meetings in the 36 months preceding the June 1967 election, unless his union activities or working hours excused his attendance. Since these requirements were a part of the Steelworkers' International Constitution, they were binding on all 3,700 local unions chartered by the International Union in 1967.

Although none of the 33 nominees was disqualified on account of the first two requirements, nine nominees were declared ineligible to seek office because of their failure to satisfy the meeting attendance rule. Of the 24 qualifying candidates, 19 had attended 18 or more of the previous 36 meetings and five more qualified as candi-

dates by combining attendance with excused absences. As a result of the disqualifications pursuant to the meeting attendance rule, the nominees for recording secretary, treasurer and guide ran unopposed.

After the election, James Hutson, a nominee for President who had been declared ineligible under the meeting attendance rule, filed a timely written protest with the Local in which he contested the reasonableness of the rule. Hutson had attended 11 of the 36 meetings preceding the election and had no excused absences because he was permanently assigned to the day shift. When Local 5724 denied his protest, Hutson appealed to the International Union's Executive Board, but that body also denied his protest. Having thus exhausted his internal union remedies, as required by § 402(a) of the Act, 29 U.S.C. § 482(a), Hutson filed a timely complaint with the Secretary.

After the investigation required by § 402(b) of the Act, 29 U.S.C. § 482(b), the Secretary then commenced this action against Local 5724. The International Union intervened as a defendant.

The District Judge conducted an evidentiary hearing as to the purposes of the Steelworkers' meeting attendance rule and concluded that it was intended to accomplish legitimate union goals. Accordingly, the District Judge held that the rule was not an "unreasonable qualification" for candidacy for local union office and that the rule was "uniformly and fairly applied" to each member of Local 5724 in the disputed election. For the reasons set out below, we agree with the decision of the District Court.

We are cited to no decision of the Supreme Court or any Court of Appeals deciding the question of whether

the Steelworkers' attendance rule is a "reasonable qualification uniformly imposed" within the meaning of the statute. Three District Courts have sustained the rule. See, *Shultz v. Local Union 6799, United Steelworkers of America,* 71 LRRM 2830 (C.D. Cal. 1969), *aff'd on other grounds,* 426 F.2d 969 (9th Cir. 1970), *aff'd sub nom., Hodgson v. Local 6799, United Steelworkers of America,* 403 U.S. 333 (1971); *Shultz v. Local 1299, United Steelworkers of America,* 324 F.Supp. 750 (E.D. Mich. 1970), *aff'd in part, sub nom., Hodgson v. Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971); *Shultz v. Local 1150, United Steelworkers of America,* 75 LRRM 2869 (S.D. Ind. 1970), *vacated on other grounds* (No. 71-1467, 7th Cir., July 1971, unreported). On the other hand, one District Court in dicta has expressed the view that the Steelworkers' rule did not constitute a reasonable qualification for eligibility for office holding, *Brennan v. Local 3911, United Steelworkers of America,* Nos. 71-C-74 (N.D. Ill., March 16, 1973).

The reason why no Court of Appeals has yet reviewed the validity of the Steelworkers' rule is because in each of the above cases the union member or members who protested the conduct of an election failed to raise the question of the legality of the rule during the course of the internal union procedure and thus did not satisfy the exhaustion requirement set forth in § 402(a) of the Act, 29 U.S.C. § 482(a).[3]

The Supreme Court determined in *Hodgson v. Local Union 6799, United Steelworkers of America, supra,* 403

3. For a text of the exhaustion requirement contained in § 402(a) of the Act, 29 U.S.C. § 482(a), see n. 2.

U.S. 333 (1971), that the failure to exhaust internal union remedies precluded the Secretary from filing suit to challenge the validity of the rule. Accordingly, the Supreme Court in *Local 6799* expressly left unanswered the issue of whether the Steelworkers' rule was reasonable. 403 U.S. at 341. Subsequently, this court found it "unnecessary . . . to reach" the merits of the Steelworkers' rule in *Hodgson v. Local 1299, United Steelworkers of America,* 453 F.2d 565, 575 (6th Cir. 1971).

In the present case the parties stipulated and the District Court found that union member Hutson, a nominee for President of Local 5724, after being declared ineligible for failing to satisfy the meeting attendance rule, thereafter attacked the validity of the rule throughout the course of his timely internal protest first to the Local and then to the International Union. Thus the validity of the Steelworkers' rule is properly before the court in this action.

In determining the reasonableness of the meeting attendance rule, we are guided by the purpose of the Labor-Management Reporting and Disclosure Act of 1959. The Supreme Court has stated the spirit of the Act as follows: "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections." *Wirtz v. Local 153, Glass Bottle Blowers Assn.,* 389 U.S. 463, 470 (1968). Section 401(e) of the Act serves this function by prohibiting candidacy requirements which are not "reasonable qualifications uniformly imposed."

In interpreting the "reasonable qualifications uniformly imposed" provision, the Supreme Court has announced the rule that § 401(e) is to be strictly construed.

In *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, 499 (1968), the Court stated:

> "Congress plainly did not intend that the authorization in 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that 'every member in good standing shall be eligible to be a candidate and to hold office . . . .' This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents. [footnote omitted.]"

The Secretary first contends that the meeting attendance rule is per se unreasonable because it bars more than 80 per cent of the members of Local 5724 from running for or holding office. The Secretary relies on *Hotel Employees, supra*, and *Hodgson v. Local Unions 18, International Union of Operatiny Engineers*, 440 F.2d 485, (6th Cir.), *cert. denied*, 404 U.S. 852 (1971).

The restriction at issue in *Hotel Employees* limited eligibility for maior elective offices to members who had previously held office. In striking down this requirement, the Supreme Court looked to its practical impact:

> "Plainly, given the objective of Title IV, a candidacy limitation which renders 93% of union members ineligible for office can hardly be a 'reasonable qualification.'" [391 U.S. at 502.]

While 93 per cent was held plainly unreasonable, the Supreme Court did not indicate the maximum permissible percentage of members that could be barred by a reasonable rule.

To answer this question, the Secretary turned to this court's opinion in *Local Unions 18, supra*. The rule at issue in that case required that candidates belong to a parent local rather than a branch local. After finding that this rule precluded over 60 per cent of the union members from holding office, this court concluded that the rule was "manifestly unreasonable," particularly because there was no relationship between the rule and a member's fitness for office. 440 F.2d at 487.

On the basis of *Hotel Employees* and *Local Unions 18*, the Secretary contends that the Steelworkers' rule is unreasonable because only 1.4 per cent of Local 5724's members had attended the necessary 18 of 36 meetings, and when excused absences were included, only 6.9 per cent were eligible to be candidates. This would leave 93.1 per cent of Local 5724's membership disqualified by the meeting attendance rule, but the Secretary acknowledges that this figure may be reduced to as low as 84.8 per cent once certain other credits for work conflicts are considered.

On the other hand, the Steelworkers argue that (1) the effect of the rule is not the touchstone for determining its reasonableness, (2) the Secretary's per se theory rests on an incorrect interpretation of *Hotel Employees* and *Local Unions 18* and (3) the Secretary's argument here is contrary to his published position as set forth in his Interpretative Manual. We agree with the Steelworkers' position.

To satisfy the minimum requirements of the Steelworkers' rule, all that any member had to do was to devote approximately two hours to union affairs every other month during the three year period between elections. The obligation thus imposed on a member was to spend thirty-six hours at union meetings every three years. Further, it should be emphasized that the meetings followed a set pattern. They were conducted on the second Thursday of each month and were scheduled at the most desirable time for purposes of accommodating a majority of the members (30 minutes after the day shift ended). In addition, the meeting hall was conveniently located within a fifteen minute automobile drive from the plant.

Assuming the accuracy of the Secretary's mathematical computations that 84 to 93 per cent of Local 5724's members were disqualified from seeking office in the 1967 election, this is largely the fault of the union members themselves. Since the union meetings were held according to a set pattern and at a convenient location, the real cause of the large scale disqualifications is not the per se existence of the Steelworkers' rule but the failure of union members to attend the meetings.

Not only does the Secretary mistakenly fail to look to the real cause of the disqualifications here, but he also misinterprets the Supreme Court's decision in *Hotel Employees* and our decision in *Local Unions 18*. The Supreme Court in *Hotel Employees* noted that only seven per cent of the members satisfied the "prior office holding" requirement; that many of these had been appointed by the incumbents to fill vacancies, thus "enabl[ing] the incumbent group to qualify members for elective office by a practice not available to dissidents;"

and that in practice, endorsement by the incumbent group was necessary to get elected to lower office, thus making it impossible for dissidents ever to qualify to run for higher office. 391 U.S. at 505. The Court finally declared that "control by incumbents through devices which operate in the manner of this bylaw is precisely what Congress legislated against in the LMRDA." 391 U.S. at 505.

This legislative objective is not thwarted by the Steelworkers' meeting attendance rule. Unlike the *Hotel Employees'* bylaw, the Steelworkers' rule disqualifies no one. Every member can qualify by the relatively unburdensome step of devoting a few hours per month to the affairs of his Union. Steelworkers disqualify themselves as a matter of free choice by their unwillingness to devote a few hours per month to Union affairs. Because of this, as the District Court expressly held in *Local 6799, supra,* 71 LRRM at 2823, every member could have qualified merely by attending one-half of the meetings.[4]

The self-evident restrictive character of the "prior office holding" rule, when accompanied by the numerical effect of drastically limiting the number of eligible candidates for office, justifies the result in *Hotel Employees*. It is, however, erroneous to conclude, as the Secretary contends, that *Hotel Employees* commands blind adherence to a per se theory even where, as here, the rule does not by itself disqualify anyone and, as will be shown below, does serve legitimate union objectives.

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4. In addition, as will be more fully noted *infra,* the Steelworkers' rule fosters the objectives of the Act, inter alia, in that by requiring dissidents to attend local union meetings it assures that incumbents cannot administer the union's affairs in an uncontrolled, arbitrary manner.

The Secretary's reliance on this court's decision in *Local Unions 18* is also misplaced. The candidacy rule in that case was drastically different from the Steelworkers' meeting attendance rule. Local 18 was divided into a parent and three sub-locals. Members of all four subdivisions were members in good standing of Local 18. The problem was that only members of the parent local were eligible to run for office and, in turn, this meant that members of the sub-locals who desired to run for local union office had to pay an additional $75 to $90 to satisfy the parent local initiation fee. 440 F.2d at 486-87.

In a bare statistical sense, this resulted in over 60 per cent of Local 18's entire membership being precluded from seeking office. This court invalidated the election in *Local Unions 18,* on the following two-fold reasoning: the union had applied a rule which (1) placed a price tag on a member's right to run for office; and (2) had no bearing on the member's fitness to hold office. 440 F.2d at 487-88. These deficiencies were deemed to be antithetical to the policies of LMRDA. The fact that the Union rule also had the effect of precluding a certain percentage of members, there 60 per cent, from running for office was plainly not the basis of the reasoning of this court.

We believe that the Steelworkers' rule has a direct, substantial relationship to fitness to hold office in that participation in union meetings is one indicia of interest in union affairs. Further, it does not place any price tag on the right to be a candidate. As such, the rationale of *Local Unions 18* does not support the Secretary's position here.

Further, the position of the Secretary is not consistent with relevant provisions of his own published LMRDA Interpretative Manual.[5] The Manual generally supports qualifications designed to assure that candidates have participated in Union affairs and specifically sanctions 50 per cent attendance requirements over one and two year periods. It is difficult for us to see any significant difference for a meeting attendance requirement covering a period of three years. These regulations, although later amended by the Secretary, were in effect when the dispute here arose.

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5. The following are excerpts from the LMRDA Interpretative Manual:

"422.250 PARTICIPATION IN UNION AFFAIRS

Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications they are not to be considered unreasonable in themselves.

"422.205 ATTENDANCE AT 6 OF 12 UNION MEETINGS MAY BE REASONABLE

A provision requiring that to be eligible as a candidate for office a member must attend six out of twelve meetings during the year, if applied fairly and uniformly to all members, would not in ordinary circumstances, be an unreasonable qualification of the right to be a candidate for union office, within the meaning of section 401(e) of the Act.

"422.206 12 OF 24 MEETINGS MAY BE REASONABLE

A provision requiring a member to have attended at least one-half of the regular meetings of

The Secretary's second main contention is that the Steelworkers' rule is unreasonable because of alleged disproportionate effects on (1) potential insurgents, (2) new members and (3) night shift workers. Although the Secretary stipulates that the Steelworkers' rule is uniformly imposed in the sense that it applies to all locals and all members, he argues that its practical impact is not uniform for all categories of members and that this lack of uniform imposition demonstrates its unreasonableness. He argues that potential insurgents do not know three years in advance that they may challenge union incumbents, that the rule hampers new members from running for office, and that the meeting time (4:30 p.m.) effectively prevents night shift workers from attending because it occurs midway between the end of one shift (8 a.m.) and the beginning of another (midnight).

We are unpersuaded by the Secretary's arguments in this regard whether they go to the reasonableness of the rule or to its uniform imposition. In our opinion, valid reasons exist, wholly apart from the meeting attendance rule in question, for requiring potential insurgents and new members to attend a minimum number of meetings before running for office, inter alia, to provide some assurance that nominees for office will have demonstrated their willingness to comply with fundamental obligations to their Union for a reasonable period

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his local union for 24 months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members.

It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction."

of time. Further, the Secretary has made no showing that the 4:30 p.m. meeting time imposed an undue hardship on the 33 employees permanently assigned to the midnight to 8 a.m. shift or the 340 employees working that shift on a rotating schedule. Union meetings were held only once a month and night shift workers could have attended the 4:30 p.m. meetings if they had desired to do so.

Finally, the Secretary contends that the purported justifications for the rule are imperceptibly small or can be served by less restrictive alternatives. We find this argument equally unpersuasive.

The District Judge conducted an evidentiary hearing limited to the purposes of the Steelworkers' rule. His conclusion of fact was that the rule was adopted for the following three reasons.[6]

"(1) To encourage broad base participation in the affairs of the union, and to obtain as large a turnout as possible at the meetings at which the union's business is conducted.

"(2) To attempt to assure that candidates have demonstrated an interest in and are likely to be concerned with the problems of the union.

"(3) To attempt to insure that candidates have participated in the affairs of the union and are, therefore, sufficiently familiar with its problems to be able more intelligently to fulfill the numerous responsibilities and duties attendant to holding office."

---

6. The Steelworkers suggest a fourth reason for the rule, to wit: to insure that those who are in the opposition will come to Union meetings in order to keep ripe their right to run against the local Union leadership.

On the basis of this evidentiary hearing, the District Judge concluded that the purpose of the Steelworker's rule was as follows:

> "[T]o accomplish legitimate union goals; namely, to provide a constant check upon the growth of unbridled control of the local's affairs by incumbent officers, as well as to provide a means of familiarizing rank and file members of that which is entailed in the management of the local's affairs.' *Shultz v. Local 1299, United Steelworkers of Amer., supra* at p. 756; *see also Shultz v. Local 1150, Steelworkers, supra* at p. 2877."

The Secretary's argument gives us no basis on which to conclude that the findings of fact of the District Judge are clearly erroneous, Fed. R. Civ. P. 52(a), or that the District Judge erred in concluding that the Steelworkers' rule was designed to "accomplish legitimate union goals."

We, therefore, hold that the Steelworkers' meeting attendance requirement for candidacy for local union office is a "reasonable qualification uniformly imposed" under the facts and circumstances of this case.

Affirmed.

Supreme Court, U. S.
FILED
MAY 13 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-657

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO AND UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Petitioners,

v.

WILLIAM J. USERY, Secretary of Labor,

Respondent

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for Certiorari Filed November 3, 1975
Certiorari Granted February 23, 1976

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* The Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit is reprinted in the Appendix to the Petition for Writ of Certiorari, beginning at page 1a. The Decision and Order of the United States District Court for the Southern District of Indiana is reprinted in the Appendix to the Petition for Writ of Certiorari, beginning at page 17a.

Relevant Docket Entries in the Proceedings Below

Nov. 23, 1970, Complaint filed. Summons issued.

Feb. 23, 1971, U.S. Steelworkers moves to intervene as a party deft. Also files a Motion for enlargement of time.

Mar. 10, 1971, Motion to Intervene Granted. United Steelworkers of America, AFL-CIO-CLC made a party defendant pursuant to Rule 24(a) F.R. Civ. P.

Aug. 17, 1971, Defts file answer to pltf's complaint, first defense and second defense.

Apr. 27, 1973, Parties file stipulation of facts.

May 10, 1973, This cause came on before the Court for trial without the intervention of a jury. . . . Plaintiff rests. . . . Defendant rests. . . . Court now takes this cause under advisement. . . .

Apr. 30, 1974, Court enters Memorandum of Opinion and plaintiff's complaint is hereby DISMISSED.

June 26, 1974, Plaintiff files notice of appeal.

Aug. 5, 1975, Judgment of the United States Court of Appeals for the Seventh Circuit reversing the order of the district court and entering judgment for the pltf.

Nov. 3, 1975, Petition for writ of certiorari and record filed.

Feb. 23, 1976, Petition GRANTED.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

* * *

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Plaintiff,

vs.

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Defendant.

COMPLAINT

I

Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et seq.*, 29 U.S.C. 401 *et seq.*), hereinafter referred to as the Act.

II

Jurisdiction of this action is conferred upon the Court by section 402(b) of the Act (29 U.S.C. 482(b)).

III

Defendant is, and at all times relevant to this action has been, an unincorporated association maintaining its principal office at 625 North 13th Street, Vigo County, Terre Haute, Indiana, within the jurisdiction of this Court.

IV

Defendant is, and at all times relevant to this action, has been, a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i), 402(j) and 481(b)).

V

Defendant is, and at all times relevant to this action has been, chartered by and subordinate to the United Steelworkers of America, AFL-CIO-CLC, hereinafter referred to as the International, an international labor organization engaged in an industry affecting commerce within the meaning of section 3(i) and 3(j) of the Act (29 U.S.C. 402(i) and 402(j)).

VI

Defendant, purporting to Act pursuant to and in accordance with the Constitution of the International and its own Constitution, conducted a nomination of officers on May 17, 1970, and an election of officers on June 22, 1970, which nominations and election were subject to the provisions of Title IV of the Act (29 U.S.C. 481 *et seq.*).

VII

On June 23, 1970, Bernard G. Frye, a member in good standing filed a written protest to the May 17, 1970 nomination and the June 22, 1970 election of officers with defendant's Recording Secretary. This protest was heard and rejected by the defendant's membership at a regular meeting conducted on July 19, 1970. By letter dated July 22, 1970, Frye appealed this decision to the International. By letter dated September 3, 1970, Frye was informed by the International that a Commission had been appointed to investigate his complaint. By letter dated September 23, 1970, having invoked the remedies available under the International Constitution for three calendar months following the election without receiving a final decision, Bernard Frye, acting pursuant to and in accordance with section 402(a) of the Act (29 U.S.C. 482(a)), filed a complaint with the plaintiff.

VIII

Plaintiff investigated the complaint pursuant to section 402(b) of the Act (29 U.S.C. 482(b)), and as a result of the facts shown by his investigation, found probable cause to believe that violations of Title IV of the Act occurred during the conduct of the defendant's nomination and election which had not been remedied at the time of institution of this action.

IX

The following violations of section 401 of the Act (29 U.S.C. 481) occurred in the conduct of said election:

(a) Section 401(b) of the Act (29 U.S.C. 481(b)) was violated in that defendant failed to elect its officers by secret ballot among the members in good standing.

(b) Section 401(e) of the Act (29 U.S.C. 481(e)) was violated in that;

(1) Members in good standing were denied the right to be candidates and to hold office by the imposition of an unreasonable qualification; and

(2) Members in good standing were denied the right to vote for and otherwise support the candidates of their choice.

X

The violations of section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of defendant's June 22, 1970 election.

WHEREFORE, plaintiff prays for judgment:

(a) declaring the nomination conducted on May 17, 1970, and the election conducted on June 22, 1970, to be null and void;

(b) directing a new nomination and election for all offices under the supervision of the plaintiff;

(c) for the costs of this action; and

(d) for such other relief as may be appropriate.

PETER G. NASH
Solicitor of Labor

GEORGE T. AVERY
Associate Solicitor

HERMAN GRANT
Regional Solicitor

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

Civil Action
No. Th 70-C-117

JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Plaintiff,

vs.

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Defendant.

MOTION TO INTERVENE

United Steelworkers of America, AFL-CIO-CLC, moves pursuant to Rule 24(a), F.R.Civ. P., to intervene in this action as a party defendant, and in support thereof shows as follows:

1. Movant is an International Union, with whom more than 3,000 local unions are affiliated.

2. Movant's International Constitution contains rules and procedures governing the nominations and election of officers in each of its affiliated local unions, which must be followed by each of said local unions.

3. Defendant is a local union affiliated with movant, and as such was required to implement the "meeting attendance" requirement contained in movant's International Constitution.

4. Movant has been informally advised by Plaintiff that Paragraph IX of the complaint herein is directed at, and will challenge, the validity of said "meeting attendance" requirement.

5. Movant therefore has a direct interest in the outcome of this action, for a decision favorable to Plaintiff would cast doubt on the validity of this provision of movant's International Constitution, while a decision favorable to Defendant would vindicate this provision of movant's International Constitution.

WHEREFORE, movant prays that this motion be granted and that United Steelworkers of America, AFL-CIO, be granted intervention as a party defendant.

Respectfully submitted,

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

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UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF INDIANA

TERRE HAUTE DIVISION

Civil Action
No. Th 70-C-117

PETER J. BRENNAN, Secretary of Labor, United States Department of Labor,
[Successor to JAMES D. HODGSON, Resigned]

Plaintiff,

v.

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
AND
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Defendants.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the plaintiff and defendants, acting through their respective attorneys, that at all times mentioned herein, the following facts are true and may be accepted as true without further proof for the purposes of trial and hearing on the complaint and answer thereto in the above-mentioned cause, and that this stipulation may be admitted in evidence.

1. Defendant, Local 3489, United Steelworkers of America, AFL-CIO, hereinafter referred to as defendant Local, is, and at all times relevant to this action has been, an unincorporated association, maintaining its principle offices at 625 North 13th Street, Terre Haute, Indiana, within the jurisdiction of this court, and defendant Local is and has been a local "labor organization" engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j), and 401(b) of the Act.

2. Defendant Local is, and at all times relevant to this action has been, chartered by and subordinate to the defendant United Steelworkers of America, AFL-CIO, hereinafter referred to as defendant International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the Act.

3. Defendant Local was chartered by defendant International and had approximately 660 members as of June, 1970, all of whom were members in good standing eligible to vote in the election of Local union officers conducted by defendant Local on June 22, 1970. The membership of defendant Local is comprised exclusively of production and maintenance employees of Stran Steel Corporation at its Terre Haute, Indiana plant.

4. (a) Attached hereto as Exhibit A and made a part hereof is a copy of the Constitution of defendant International, adopted on August 22, 1968.

(b) Attached hereto as Exhibit B and made a part hereof is a true copy of the Local Union Elections Manual, as amended January 1967, of defendant International.

(c) Attached hereto as Exhibit C and made a part hereof is a true copy of the standard By-Laws for Local Unions, as amended January, 1967, adopted by defendant Local pursuant to Article VII, Section 5 of the International Constitution, adopted August 22, 1968.

4. Defendant Local is, and at all times relevant to this action has been, conducting its affairs under the International Constitution, adopted August 22, 1968, referred to as Exhibit A in paragraph 3(a) hereof, the Local Union Elections Manual, referred to in paragraph 3(b) hereof, and the standard By-Laws for Local Unions, referred to in paragraph 3(c) hereof. The election provisions of the aforesaid International Constitution, adopted August 22, 1968, the Local Union Elections Manual, and standard By-Laws for Local Unions were, and are now, subject to the provisions of Title IV of the Act.

5. With regard to eligibility to be a candidate to hold office, and with regard to the terms of office:

(a) Article VII, Section 9 of the International Constitution adopted August 22, 1968, referred to as Exhibit (A) in paragraph 3(a) hereof, provides, in pertinent part, as follows:

> No member shall be eligible for election as a Local Union officer or Grievance Committeeman unless
>
> * * *
>
> (c) He had attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1970, election, unless his Union activities or working hours prevented his attendance.

(b) Article VII, Section 8 of the International Constitution adopted August 22, 1968, referred to as Exhibit A in paragraph 3(a) hereof, provided:

> Section 8. All Local Union Officers and Grievance Committeemen shall be elected for a term of three (3) years at the last meeting in June commencing June, 1970, by a plurality vote of the members participating in a referendum vote * * *.

(c) Article VII, Section 9 of the Local Union Elections Manual, referred to as Exhibit B in paragraph 3(b) hereof, provides, in pertinent part, as follows:

> Section 9. No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless
>
> * * *
>
> (c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1967, election, unless his Union activities or working hours prevented his attendance.

(d) Article IV, Section 5 of the standard By-Laws for Local Unions referred to as Exhibit C in paragraph 3(c) hereof, provides, in pertinent part, as follows:

> No member shall be eligible for election as an Officer or Grievance Committeeman unless
>
> * * *
>
> (c) He has attended at least one-half of the regular meetings of his Local Union for 36 months previous to the election, unless his Union activities or working hours prevented his attendance.

6. The meeting attendance requirement, as set forth in the International Constitution, referred to as Exhibit A in paragraph 3(a) hereof, the Local Union Elections Manual, referred to as

Exhibit B in paragraph 3(b) hereof, and the standard By-Laws for Local Unions, referred to as Exhibit C in paragraph 3(c) hereof are applicable to and binding upon each of the thirty-seven hundred (3,700) local unions chartered by the defendant International Union.

7. The membership of defendant Local 3489 is composed exclusively of the production and maintenance employees of the Stran Steel Corporation situated at Terre Haute, Indiana. Throughout the period from May, 1967 to June, 1970, the employees at the aforesaid plant regularly worked Monday through Friday, inclusive, on three shifts. All employees generally worked the same shift without rotating, unless their jobs were changed during the three-year period.

8. (a) Pursuant to the provisions of the International Constitution, Local Union Elections Manual, and standard By-Laws for Local Unions then applicable, to have been eligible as a candidate in defendant Local's June 22, 1970 election, a member must: (a) have been in continuous good standing for a period of twenty-four (24) months immediately preceding the election; (b) be employed in the Terre Haute, Indiana plant of the Stran Steel Corporation; and (c) have attended at least eighteen (18) of the regular meetings held by defendant Local in the thirty-six (36) months preceding the election (June, 1970), unless his Union activities or working hours prevented his attendance. No credit is ever given for meetings missed for any reason other than working hours (or Union activities).

(b) The defendant Local held nominations for office on May 17, 1970, and an election of officers on June 22, 1970. The nominations and election were subject to Title IV of the Act.

9. (a) During the period from June, 1967 to May, 1970, the defendant Local conducted 36 regular monthly meetings at the union hall located at 625 North 13th Street, Terre Haute, Indiana. The hall is located approximately three miles from the Stran Steel plant, within a ten minute automobile ride from the plant.

(b) From January, 1967 through February, 1970, split meetings were held monthly at the union hall, 625 North 13th Street, Terre Haute, Indiana, on both the second Wednesday of every month at 4:30 p.m., and on the second Thursday of every month at 1:30

p.m. Commencing in March, 1970, only one meeting was held on the third Sunday afternoon of each month.

(c) Attendance at defendant Local's monthly meeting averaged 47 members per meeting.

10. Prior to defendant Local's nomination meeting on May 17, 1970, Clifford Baker, then Recording Secretary, compiled a list of 22 names from the Local's attendance register, which list included the names of all those Local Union members who had attended at least 18 of the past 36 monthly meetings, which persons were thus eligible to be nominated as candidates for a Local Union office at the forthcoming nomination meeting and eligible to hold union office. Attached hereto, made a part hereof, and marked Exhibit D is a true and correct copy of the aforesaid list, which was posted at the union hall prior to the May 17, 1970, nomination meeting.

11. Of the 22 Local members described in paragraph 10 hereof who were eligible for union office, ten were incumbent officers of defendant Local, as follows:

President, W. Uzzell	Trustees: R. Brown
Vice President, R. Satz	E. Hoffman
Recording Secretary, C. Baker	B. Brackall
Financial Secretary, G. Layman	Guide, R. Dayhuff
Treasurer, J. Krischak	Guard, R. Erickson

12. (a) On May 17, 1970, defendant Local conducted a meeting for the purpose of nominating candidates. At this meeting a total of 53 nominations of members were made for the nine offices as set out below. The following candidates were nominated:

President:	Vice President:
W. Uzzell	P. Eickelman
B. Frye	R. Satz
J. Forsythe	H. McCloud
P. Eickelman	B. King
R. Satz	M. Mahoney
	D. Ross

Recording Secretary:	Financial Secretary:
M. Mahoney	G. Layman
C. Baker	D. Ross
G. Layman	D. Jones
P. Eickelman	B. Frye

Treasurer:
J. Krischak
R. Satz
P. Eickelman
D. Ross

Trustees
R. Brown
E. Hoffman
B. Brackall
R. Dayhuff
F. Blade
J. Powell, Jr.
J. Krischak

Guard:
R. Erickson
H. Sessions

Grievance Committee:
F. Blade
C. Jett
M. Mahoney
R. Dayhuff
J. Powell, Sr.
G. Layman
H. McCloud
J. Forsythe
B. King
B. Roth
D. Jones
P. Lebaney
S. Geisert
B. Frye
B. Weiger
J. Krischak

Guide:
R. Dayhuff
H. McCloud
C. Hoffman
W. Larue
T. Clinkenbeard

(b) Of the aforementioned nominees, nineteen (19) persons declined thirty (30) nominations as follows:

President:
P. Eickelman
R. Satz

Vice President:
R. Satz
H. McCloud
B. King
M. Mahoney
D. Ross

Recording Secretary:
C. Baker
G. Layman
P. Eickelman

Financial Secretary:
D. Ross
B. Frye

Treasurer:
J. Krischak
R. Satz
P. Eickelman

Trustees:
J. Powell, Jr.
J. Krischak

Grievance Committee:
C. Jett
G. Layman
B. Roth
B. Weiger
R. Dayhuff
H. McCloud
S. Geisert
J. Krischak

Guard:
H. Sessions

Guide:
R. Dayhuff
C. Hoffman
H. McCloud
T. Clinkenbeard

Since the above-named individuals declined nominations, the Election Committee which was thereafter constituted, as hereinafter described in paragraphs 12(d) through 12(f) hereof, did not decide any questions concerning their eligibility to be a candidate and to hold office.

(c) Of the aforementioned nominees, the following were incumbent officers of defendant Local Union 3489 for the period from June, 1967 to June, 1970:

President: Willis Uzzell
Financial Secretary: Gerald Layman
Trustees:
Robert Brown
Chester Hoffman
Richard Dayhuff
Guard: Roy Erickson

(d) After the nomination of candidates was completed nominations were taken for the position of election teller to conduct the election of June 22, 1970. The following candidates were nominated:

ELECTION COMMITTEE

H. McCloud
J. Krischak
V. Batson
J. McGow
D. Ross
J. Doran
J. Tyler
C. Baker
C. Hoffman

(e) The following candidates for the position of election teller declined:

J. Krischak
V. Batson
D. Ross
C. Hoffman

(f) An election for the position of election teller was held, and the following were elected:

C. Baker
H. McCloud
J. Tyler

13. Following the nomination meeting of May 17, 1970, David L. Jones and B. Brackall were informed that they were ineligible for union office because they had attended an insufficient number of Union meetings (David L. Jones had attended three meetings; B. Brackall had attended 16 meetings).

14. In compiling the list of eligible candidates referred to in paragraph 10 hereof, defendant Local did not request work records kept by the employer, Stran Steel Corporation, nor had it ever been the policy of the Union to check work time credits (which may satisfy the meeting attendance requirement) unless a nominee or member so requests. No requests of this nature have ever been made.

15. The following persons nominated at the nominations meeting of May 17, 1970, were declared eligible solely on the basis of having actually attended eighteen (18) or more meetings:

President:
W. Uzzell
B. Frye
J. Forsythe
Vice President: P. Eickelman
Recording Secretary: M. Mahoney
Financial Secretary: G. Layman
Treasurer: D. Ross
Trustees:
R. Brown
E. Hoffman
R. Dayhuff
F. Blade

Grievance Committee:
F. Blade
M. Mahoney
J. Powell, Sr.
J. Forsythe
B. King
P. Lebaney
B. Frye

Guard: R. Erickson

Guide: No eligible candidate

16. While, as indicated in paragraph 10 hereof, W. Larue had not attended at least 18 meetings, he was permitted to run for the office of Guide because of the long standing custom of defendant Local that if there was no eligible candidate for a particular office, the office could then be filled by a non-eligible member.

17. (a) The Election Committee conducted the balloting in the election of June 22, 1970, at the union hall meeting room at 625 North 13th Street, Terre Haute, Indiana. Said meeting room was approximately 60′ X 20′ and had one entrance in the front thereof and one exit at the rear. The ballot box was located on a long counter inside the meeting room in the back of the front room of the hall.

(b) The Election Committee, composed of H. McCloud, J. Tyler, and C. Baker were in charge of conducting the election. At least two of them were present at all times with half hour lunch periods taken on a staggered basis. They were not assisted by any observers.

(c) The Election Committee did not prepare a list of members eligible to vote. Instead, for the purpose of determining eligibility of the voters, the Election Committee obtained from Stran Steel Corporation a monthly seniority list which was utilized for this purpose.

(d) Defendant estimates that approximately one vote was cast each three minutes. Further, there may have been as many as 50 voters awaiting the opportunity to cast their ballots at approximately 4:00 to 4:30 p.m.

(e) In all, 249 ballots were cast.

18. Attached hereto, made a part hereof, and marked Exhibit E is a true and correct copy of a ballot used at defendant Local's June 22, 1970, election.

19. At the termination of the voting period, the Election Committee sealed the ballot box and tabulated the ballots.

20. The Election Committee published the following results:

Candidate	*Number of Votes*
President	
Willis Uzzell (Elected)	154
Russell Forsythe	16
Bernard Frye	79
Vice President (Unopposed)	
Paul Eickelman (Elected)	228
Recording Secretary (Unopposed)	
Mike Mahoney (Elected)	186
Financial Secretary (Unopposed)	
Gerald Layman (Elected)	214
Treasurer (Unopposed)	
Don Ross (Elected)	211
Trustees	
Robert Brown (Elected)	212
Chester Hoffman (Elected)	218
Richard Dayhuff (Elected)	204
Fred Blade	41
Guard (Unopposed)	
Roy Erickson (Elected)	204
Guide (Unopposed)	
Wayne Larew (Elected)	192

21. After the conduct of the election, Bernard Frye, a member in good standing who had been nominated for the Presidency, filed a timely written protest (letter dated June 23, 1970) with the defendant Local. A true copy of that letter is attached hereto as Exhibit F and made a part hereof. In his letter, Frye, *inter alia,* protested the reasonableness of the requirement of the International Constitution that candidates for local union office attend one-half

of the regular meetings held in the thirty-six (36) months prior to the election, and that there were no voting booths to have a "secret ballot" election, resulting in members using walls, chairs, and tables to vote, and in that persons marking ballots could be seen by others.

22. The defendant local denied Frye's protest and he appealed the decision to the Executive Board of the Defendant International (letter dated July 19, 1970) in accordance with the International Constitution. A true copy of that letter is attached hereto as Exhibit G and made a part hereof. The International Executive Board voted to withhold action on the appeal on March 22, 1971, after a hearing had been conducted by an International Commission appointed to hear Frye's appeal. An International Commission was appointed and a hearing was held on September 8, 1970. On September 23, 1970, Frye filed a written complaint with the Secretary of Labor, *inter alia,* challenging the reasonableness of the Defendant International's meeting attendance requirement, and defendant Local's failure to have voting booths in order to conduct a secret ballot election. A true copy of the written complaint is attached hereto as Exhibit H and made a part hereof.

23. On October 15, 1970, the International Commission prepared and submitted its final decision on member Frye's appeal to the International Executive Board.

24. The Steel Workers Organizing Committee (hereafter "SWOC"), an organization representing steel industry employees, was formed in 1936 and held its first Convention in December 1937. The rules governing convention representation and selection of delegates provided that in order to be eligible to act as a delegate a member must be "a regular attendant of the meetings of his lodge." At the Convention, SWOC formulated Rules and Methods of Procedure to govern the affairs of lodges. These rules did not require attendance at meetings as a qualification on the right to seek and hold local union office. No such requirement was adopted at the 1940 Convention. (While agreeing to the accuracy of these facts, defendant Steelworkers is of the view that they are not relevant here.)

25. In 1942, SWOC was disbanded and in its place the United Steelworkers of America (hereafter "the Steelworkers") was established. Under the Steelworkers Constitution, the International President has the authority to appoint, prior to the opening date

of the Convention, such committees as are necessary to conduct the affairs of the International Convention, subject to the approval of the Convention (Article IV, Section 8). Among the committees uniformly appointed by the President is the Constitutional Committee.

26. Pursuant to the provisions of the Constitution (Article IV, Section 8), this Committee meets prior to the opening of the Convention and considers all resolutions for amendments to the Constitution previously submitted by local unions or recommended by the International Executive Board. Thus, Article VI ("Conventions"), Section 12 provides:

> All Local Union resolutions to be considered by the International Convention must be adopted by the Local Union and shall be sent to the International Secretary-Treasurer. They must be in his hands not later than ten (10) days prior to the convening of the International Convention. The International Secretary-Treasurer shall submit all Local Union resolutions and any recommendations of the International Executive Board to the chairmen of the appropriate committees.

27. The members of the Constitutional Committee, as noted, are appointed by the International President from among the delegates "elected at an official meeting of a Local Union or by referendum ballot election, after the Call for the International Convention is received and has been read to the Local Union." (Article VI, Section 10).

28. The Steelworkers adopts a Constitution at each of its biannual Conventions. The initial action with respect to amendments or revisions to the Constitution takes place within the Constitutional Committee. That body receives all resolutions submitted by Local Unions and any recommendations of the International Executive Board concerning suggested amendments to the Constitution. The Committee then discusses, debates and acts upon the proposed amendments by submitting a report to the Convention recommending whether the Constitution should or should not be amended with respect to each of the specific resolutions submitted by any Local Union or recommended by the International Executive Board. The report of the Committee does not set forth the reasons for its recommended actions.

Thereafter, the report of the Committee is presented to the Convention and acted upon by the delegates, with or without debate as the case may be. The Constitution may be amended only by majority vote at the Convention (Article XIX).

The meetings of the Constitutional Committee, like all other Committees which function in connection with the Convention, are not transcribed. Accordingly, there is no written record of what discussions were had within the Constitutional Committee either with respect to the reasons for adopting a meeting attendance rule initially in 1942 or the subsequent modifications of that rule as described below.

The formal Convention proceedings, however, are transcribed and what follows is a brief description tracing the historic development of the meeting attendance rule as reflected in said formal Convention proceedings.

29. In May 1942 at its first Convention, the Steelworkers adopted a Constitution. Article VII, Section 9(c) of this Constitution provided that to be eligible as a candidate for local union office a member must have

> attended at least one-half of the meetings of his local union for six months previous to the election unless his union activities or working hours prevented his attendance.

Article VI, Section 7(b) of the Constitution imposed a similar requirement on candidates for election as delegates. In the formal Convention Proceedings no reasons were cited for the meeting attendance requirement to hold local union office and there was no debate on the issue on the floor.

30. At the 1944 Convention, the meeting attendance requirement was amended to provide for attendance at one-half of the *regular* meetings of the Local for the six months preceding the election. The formal Convention Proceedings show no reasons for this change and there was no debate on the issue on the floor.

31. At the 1946 Convention, the terms of local union officers were increased from one year to two years effective June 1946 (1946 Proceedings, pp. 359, 360; 1946 Constitution, Article VII, Section 8). No change was made in the meeting attendance requirement.

32. At the 1948 Convention, the period of time in which members were required to attend one-half (½) the meetings preceding

elections was lengthened from six months to twelve months, both for local union officers and for Convention delegates. The Convention Proceedings relating to these changes are attached hereto as Exhibit I.

33. At the 1952 Convention, the Constitutional Committee recommended that the meeting attendance rule be increased from twelve months to twenty-four months for local union officers to be effective in local union elections commencing in June 1952. Following debate, the original resolution was withdrawn and rewritten to provide that the increase in attendance would be effective for elections subsequent to June 1952. The revised resolution was adopted by the Convention. The same change was made in the meeting attendance requirement for delegates. The Convention Proceedings relating to this proposal are attached hereto as Exhibit J.

34. At the 1956 Convention, a resolution was introduced which would have required that a member must attend one-half of the meetings that his working hours did not prevent his attending. No change in the Constitution resulted. However, there was discussion on the resolution. The Convention Proceedings relating to this proposal are attached hereto as Exhibit K.

35. At the 1960 Convention, a Local Union submitted a resolution to amend the Constitution in a manner similar to that suggested in 1956, as described above. No change in the Constitution resulted. However, there was discussion on the resolution. The Convention Proceedings relating to this proposal are attached hereto as Exhibit L.

36. At the 1962 Convention, the term of office for local union officers was increased from two (2) years to three (3) years to be effective commencing with the June 1964 elections (Article VII, Section 8). No change was made in the provisions of the Constitution dealing with the meeting attendance rule.

37. With respect to the 1964 Convention, attached hereto as Exhibit M is the statement of counsel for defendant, who was present, concerning what transpired within the Constitutional Committee. At the Convention, the meeting attendance rule was amended to provide that members must have attended one-half (½) of the meetings in the thirty-six (36) months preceding the election, subject to the exceptions for union business or conflict in working hours

previously in effect. The Convention Proceedings relating to this amendment are attached hereto as Exhibit N.

38. It is the position of the defendant International that the meeting attendance requirement as set forth in the International Constitution, By-Laws for Local Unions and the Local Union Elections Manual should be retained because it serves a three-fold purpose:

(a) to encourage broad base participation in the affairs of the union, and to obtain as large a turnout as possible at the meetings at which the union's business is conducted;

(b) to attempt to assure that candidates have demonstrated an interest in and are likely to be concerned with the problems of the union; and

(c) to attempt to insure that candidates have participated in the affairs of the union and are, therefore, sufficiently familiar with its problems to be able more intelligently to fulfill the numerous responsibilities and duties attendant to holding office.

This position was made known to representatives of the Secretary of Labor by representatives of defendant International prior to the initiation of this suit.

39. The parties hereby further agree as follows:

(a) Attached hereto as Exhibit O and made a part hereof is a true copy of the relevant portions of the transcript of testimony of Herbert J. Lahne, Director of the Division of Research, Labor-Management Services Administration, United States Department of Labor, which testimony was adduced at the trial of the case of *George P. Shultz, Secretary of Labor* v. *Local Union 6799, United Steelworkers of America, AFL-CIO, et al.,* in the United States District Court for the Central District of California, Civil No. 68-326-EC. The testimony set forth in Exhibit O may be considered by the Court as though it were oral testimony adduced at the trial of the cause now before this Court.

(b) Attached hereto as Exhibit P and made a part hereof, is a chart prepared by Herbert J. Lahne, Director of the Division of Research, Labor-Management Services Administration, United States Department of Labor, entitled "Attendance at Union Meetings as a Requirement for Nomination or Election to Local Union Office, as Provided by National Union Constitutions and Bylaws, June, 1967." Exhibit P is a copy of the document received in evi-

dence as Plaintiff's Exhibit 15, in the case of *George P. Shultz, Secretary of Labor* v. *Local Union 6799, United Steelworkers of America, AFL-CIO, et al.*, in the United States District Court for the Central District of California, Civil No. 68-326-EC (Transcript, pp. 305-306).

40. The parties further agree that the following defendants' exhibits introduced and received in evidence in the mentioned *Shultz* v. *Local Union 6799, USWA* case, are hereby made part of the instant record subject to the plaintiff's right to raise here any legal objections to their admissibility:

(a) Defendant Exhibit L in the *Local Union 6799* case—Holcombe letter to the Honorable Robert Kastenmeir (dated February 29, 1960). This exhibit is attached hereto, made a part hereof, and marked Exhibit Q.

(b) Defendant Exhibit N in the *Local Union 6799* case—Merrick letter to the Honorable Jonathan Bingham (dated November 25, 1966). This exhibit is attached hereto, made a part hereof, and marked Exhibit R.

(c) Defendant Exhibit Q in the *Local Union 6799* case—Kleiler letter to Senator Javits (dated December 5, 1966). This exhibit is attached hereto, made a part hereof, and marked Exhibit S.

(d) Defendant Exhibit T in the *Local Union 6799* case—excerpts from U. S. Department of Labor LMRDA Interpretative Manual, to wit: Sections 422.205, 422.206, 422.208, 422.250. This exhibit is attached hereto, made a part hereof, and marked Exhibit T.

It is further stipulated and agreed that each party reserves the right to present additional evidence at the trial.

DATED: April 27, 1973.

WILLIAM J. KILBERG, Solicitor of Labor
HERMAN GRANT, Regional Solicitor
ALAN M. SERWER, Attorney
Attorneys for Peter J. Brennan, Secretary of Labor, United States Department of Labor,
Plaintiff.

A. E. LAWSON
Attorney for Defendants

EXHIBIT D

Members eligible to run for office with 18 meetings or more.

C. Jett 251	R. Erickson 682	M. Mahoney 1040
J. Krischak 268	G. Layman 617	R. Satz 1075
D. Ross 339	W. Uzzell 622	V. Batson 1030
B. King 319	C. Hoffman 683	E. Debney 1050
B. Frye 363	P. Eickelman 800	J. L. Powell 1203
R. Dayhuff 549	R. Forsythe 859	F. Blade 1244
R. Brown 521	C. Kennedy 966	
J. Powell 560	H. McCloud 902	

Members having attended 15 to 18 meetings.

B. Scank 227	15	W. Larue 524	16	B. Brackall 605	16

EXHIBIT E

UNITED STEELWORKERS OF AMERICA
ELECTION OF OFFICERS AND
COMMITTEEMEN
LOCAL UNION 3489

President (Vote for one)
- Willis Uzzell ..... ☐
- Russell Forsythe ..... ☐
- Bernard Frye ..... ☐

Vice President
- Paul Eikelman ..... ☐

Recording Secretary
- Mike Mahoney ..... ☐

Financial Secretary
- Gerald Layman ..... ☐

Treasurer
- Don Ross ..... ☐

Guide
- Wayne Larue ..... ☐

Guard
- Roy Erickson ..... ☐

Trustees (Vote for three)
- Robert Brown ..... ☐
- Chester Hoffman ..... ☐
- Richard Dayhuff ..... ☐
- Fred Blade ..... ☐

Grievance Committee
(Vote for five)
- Fred Blade ..... ☐
- Ed Debney ..... ☐
- Russell Forsythe ..... ☐
- Mike Mahoney ..... ☐
- Bill King ..... ☐
- Bernard Frye ..... ☐
- James Powell ..... ☐

EXHIBIT F

TITLE IV—filed 6-23-70 in regards to the Election of 6-22-70. Copy of Original sent to Local Union.

1. There was no booths to have a *"secret ballot"*, that the men had to use the walls, chairs, tables and anything else, with men next to them knowing how they voted, thus leading to intimidation of the Voters.

2. That "reasonable requests for distribution of campaign literature" could not in most cases be made, because equal rights of the candidates did not exist Reason: new candidates know nothing of about the rules in the Local Union Election Manual. Only the old candidates or incumbents had said copies. In fact, there were, according to the Recording Secretary, only four said books for the entire membership outside of the officers.

3. That only the incumbent officers had access to lists of members, thus discrimination in favor of the incumbents and discrimination against new candidate. Reason: No knowledge was given, because of lack of Local Union elections Manuals.

4. That because of the lack of the Local Union election Manual, new candidates did not have the equal knowledge of the right to inspect a "list containing the names and last known addresses of all members".

5. The Local Union did not make "adequate safe guards to insure a fair election". (Ballots were placed in the center of the table where one took his own Ballot).

6. I was refused the right to have an observer at the polls, and also at the counting of the Ballots, on the grounds that I did not tell them in time. Title IV does not contain a time limit for having an observer named.

7. That the requirement to have attended 18 meetings was *unreasonable* because it disqualified all members (550 strong) except 22 members, when there was a total of 15 positions to be filled.

8. That approximately (151) members on lay-off status were not given equal and reasonable notification of the nomination held May 17, 1970 (working members were sent a special Post Card).

9. That approximately (151) members on lay-off status were not given equal and reasonable notification of the election held June 22, 1970, thus not giving them equal rights to Vote.

10. That the election was not held in accordance with the Constitution and By-Laws of the Local Union, the Local Union Election Manual does state that the Nominations would be held at the meeting *immediately* preceding the election. We had a meeting the day before the elections which was a violation of our own Manual.

11. That the Tellers did let candidates and members loiter at the Polling Place even though one Teller states he knew of the requirements in our Manual which states we can't loiter. This caused intimidation of the Voters because they were forced to mark their ballots in front of all present.

12. That the elections was held on Monday, which gave the incumbent an edge over the other candidates, thus not giving equal opportunity.

13. That a Veteran who had been back to work for eight months was not permitted to run for office even though he was nominated because he didn't have 18 meetings in.

14. That the Tellers did refuse to let William Field, a member in good standing, on Lay-off, to vote and only after appealing it to the International Representative Rust Dollars, was he permitted to cast his Vote.

15. That the Local Union President and the International Representative did state at three monthly meetings, the last being June 21, 1970 the day before the election, that the men on lay-off had no right to vote.

16. That there were several meetings held at the Local (4-12 shift) which the attendance was not taken because of lack of ten members to have said meeting even though it was to be a continuous meeting. Day shift having the other half of the meeting, thus men were not able to meet the requirement of 18 meetings.

17. That sometimes there was no guard on the attendance Records ledger, thus permitting members to add extra names if they so wished.

Therefore, I request New Nominations and New Elections be held, and that the unreasonable requirement of 18 meetings be dropped in this particular case.

Respectfully requested,

s/ Bernard G. Frye
1304 South 7th
Terre Haute, Indiana 47802

EXHIBIT G

1304 South 7th
Terre Haute, Indiana 47802
July 19, 1970
(Enclosure of Charges)

International Executive Board
United Steelworkers of America
1500 Commonwealth Building
Pittsburgh, Pa. 15222

Dear Sir and Brother:

It is my unpleasant task to request of your Board to call new nominations and election for my Local 3489 (Steelworkers).

Dear Brother, I have, to the best of my ability, followed the Local Union elections Manual. On Page (31) thirty-one of the above said Manual, it states, "All protests . . . must be filed in writing with the Local Union *prior* to the membership meeting at which the report of the election committee is read."

At our Local Union meeting, held July 19, 1970, the election committee report was read and also my protest of the election dated June 23, 1970, Registered letter #24300. Also additional charges filed July 14, 1970, Registered letter #64129 were read.

The Local Union, after I requested new nominations and new election be held, entered into its minutes the following: "Objection by C. Jetl, that such an action is not called for until after facts are considered and studied before any action can be taken." No additional action was taken, I was not permitted to give my side of the matter, and was called out of order. The International Representative was present and rendered no help in my effort to give the facts. Therefore, I appeal the decision of our Local and ask your Board to call for Nominations and election be held over again for Local 3489.

Fraternally,

s/ B. Frye

EXHIBIT M

APPENDIX

In The

Supreme Court of the United States

October Term, 1970

No. 655

James D. Hodgson, Secretary of Labor,
Petitioner,

v.

Local Union 6799, United Steelworkers of America, AFL-CIO, et al.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

---

Petition for Certiorari Filed September 4, 1970
Certiorari Granted December 7, 1970

* * * *

[392] MR. GOTTESMAN: Then I would offer a stipulation that if I were—and we have discussed this among counsel—that if I were called as a witness I would testify as follows: I was present at the conventions of the International Union, United Steelworkers of America, in 1962 and in 1964.

That the Union holds its conventions every other year. And that prior to the 1962 convention the term of office provided in the Constitution for Local Union officers was two years.

That at the 1962 convention the delegates voted to change the term of office to three years and that became effective with what was the next election thereafter, namely, the 1964 election.

In the 1962 convention no change was made in the provision of the Constitution dealing with meeting [393] attendance. At that time that provision stated that a member had to have attended 12—I guess one-half of the meetings during the preceding 24 months.

At the 1964 convention I served as counsel to the Constitution Committee of the convention. The International Officers had not recommended any change in the constitutional provision dealing with meeting attendance.

However, from the floor of the Constitution Committee a number of delegates proposed that that provision be changed so that it was co-terminus with the new term of o[illegible] namely, three years. Therefore, it recites the number of meetings that had to be attended was one-half of 36.

The Chairman of the Constitution Committee, who was a member of the International's Executive Board, stated that in his judgment that change was not required.

However, the delegates, when they voted upon it in the Constitution Committee, voted that the change should be made or at least should be recommended to the floor of the convention as a whole. The majority so voted. The Constitution Committee made that recommendation to the convention as a whole and it was adopted by the convention as a whole.

So that beginning with the 1964 Constitu- [394] tion the provision has appeared that the meeting attendance requirement is one-half of 36 meetings.

Since the '64 convention took place, after the 1964 elections, the first elections which were run under the new half of 36 requirement were those which were run in 1967.

I might add for clarity that all of the Local Unions in the Steelworkers elect at the same time, namely, in June of a year designated in the Constitution. So that in June of 1967 all of its Local Unions were conducting elections.

I offer that if called I would have so testified.

MRS. JANAVS: So stipulated. We have no cross examination as to this testimony.

EXHIBIT N

Article VII, Section 9—Page 47

There were 29 resolutions dealing with eligibility requirements.

Three (3) resolutions would tighten eligibility requirements so that members on the 3 to 11, and the 4 to 12 shifts must attend at least six (6) Local Union meetings.

Two (2) resolutions will permit absence from Local Union meeting due to vacation to be an allowable reason for non-attendance.

Eleven (11) resolutions would request that a member, who is normally excused from attending a meeting because he is working, will get credit for such meeting if he makes his request in writing.

Four (4) resolutions would make ineligible for office those members who performed supervisory functions in the 24-month period prior to election.

One (1) resolution would require that attendance credits be acquired prior to the time of *nomination* instead of election.

Five (5) resolutions would require attendance at one-half of regular meetings "for the 24 months prior to June elections that his working hours or Union activities permit."

Two (2) resolutions would require attendance at one-half of the regular meetings for 36 months instead of 24 months previous to the Local Union elections.

The Committee non-concurs in the first twenty-seven (27) resolutions but does concur in the last two resolutions requiring attendance at one-half (½) of the regular meetings for 36 months previous to the Local Union elections. The Committee also recommends a date change on line 28 from "June, 1964" to "June, 1967." Section 9, page 47, line 25, paragraph (c), will then read:

"(c). He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June 1967 election, unless his Union activities or working hours prevented his attendance."

Committee Secretary Carcella: The Committee recommends its adoption.

. . . The recommendation of the Committee was adopted.

EXHIBIT O

THE WITNESS: Herbert J. Lahne, L-a-h-n-e.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. DONOGHUE:

Q. By whom are you employed?

A. U.S. Department of Labor.

Q. What is your present position?

A. I am Director of Division of Research, Labor-Management Services Administration.

Q. How long have you held this position?

A. Under different organizational setups since 1959.

Q. What type of work does this Division perform?

A. We do research in the field of Union structure, administration, welfare, pension plans and anything [304] that is requested by the Assistant Secretary under whose supervision we happen to be.

Q. This includes work in connection with the Labor-Management Reporting Disclosure Act?

A. It does.

MR. DONOGHUE: Your Honor, we have attached to the list of plaintiff's witnesses a summary of Mr. Lahne's experience and educational background.

At this time to avoid any delay, we would like to offer that as an exhibit.

MRS. JANAVS: 19.

MR. DONOGHUE: 19.

MR. GOTTESMAN: No objection.

THE COURT: 19 is ordered in evidence.

(Document marked Plaintiff's Exhibit 19 was received in evidence.)

MR. DONOGHUE: At this time, your Honor, I would like to move that Mr. Lahne be qualified as an expert in labor relations.

THE COURT: Any objection.

MR. GOTTESMAN: Your Honor, I'm not sure what an expert in labor relations is.

We will certainly stipulate Mr. Lahne is an expert in those areas

in which his qualifications, as described in Plaintiff's Exhibit 19, relate.

[305] THE COURT: Very well. All right. You may proceed.

MR. DONOGHUE: I would like at this time to have marked as Plaintiff's Exhibit 15 a chart showing a study of 72 National Constitutions.

THE COURT: Very well. 15 for identification.

(Document was marked Plaintiff's Exhibit 15 for identification.)

MR. DONOGHUE: May that be handed to Mr. Lahne, please?

(Exhibit placed before the witness.)

BY MR. DONOGHUE:

Q. Mr. Lahne, referring to Plaintiff's Exhibit for identification 15, could you identify this document and tell us what it is?

A. Yes, sir. This document was prepared under my direct supervision in my office, and as the title indicates it shows for 72 National Unions the provisions in those Union Constitutions relating to attendance requirements as a qualification for nomination or election to Local office. The date is shown as of June 1967.

Q. That is the date of the election in question?

A. That is what I understand.

[306] MR. DONOGHUE: I would move now, your Honor, that Plaintiff's Exhibit 15 be admitted.

MR. GOTTESMAN: No objection.

THE COURT: 15 is ordered in evidence.

(Document marked Plaintiff's Exhibit 15 was received in evidence.)

BY MR. DONOGHUE:

Q. Now, Mr. Lahne, would you explain in your own words exactly what the chart shows?

A. Yes. This chart in its first column at the left gives the name of the Union in a short form.

The second column gives the date of the provisions analyzed, which are in effect as of June 1967.

The third column shows the number of members in each of the Unions so named.

The last two columns show the attendance requirements in each of these Unions, if there are any such requirements.

There are two columns, the two last columns show the number or percentage of meetings which is specified in the Constitution to be required, and the last column shows the number of months over which that attendance must be achieved.

Looking at the—do you want me to point out the various highlights of the table at the present [307] time in terms of what it shows?

Of the 72 National Unions here, which comprise 90 per cent of the Union membership in the country, of these 72 56 of these Unions, with 68 per cent of the membership, have no provisions requiring attendance at meetings to be eligible to run for office.

Four of the Unions, with 7 per cent of the Union membership, give the Local Union an option as to whether or not they have a meeting attendance requirement.

And just 12 of the Unions, with 25 per cent of the membership, have a mandatory provision requiring candidates for Local offices—

THE COURT: You said 25 per cent?

THE WITNESS: 25 per cent of the membership, yes, sir. 12 Unions, with 25 per cent of the total membership, have provisions which require—

THE COURT: Mandatory?

THE WITNESS: —attendance at meetings. Now, these requirements vary somewhat, but I will just refer to the period of time required to fulfill the requirement.

Of the 12 Unions, four of them allow the requirement to be fulfilled in six months. Two of them have the requirement subject to fulfillment in one year. [308] Three of them provide a two-year period over which the requirement must be fulfilled. And two of them specify that there is a three-year period.

THE COURT: Is this one of them, the Local here?

THE WITNESS: The Steelworkers is one of the three-year Unions.

THE COURT: One of the two—

THE WITNESS: I'm on three years now. Four of them are six months.

THE COURT: Yes, I understand that. Two with a year, three with two years and two are three years.

THE WITNESS: Two are three years.

THE COURT: Now, I asked you—

THE WITNESS: The Steelworkers is one of those two for three years.

THE COURT: All right. What about the other ones?

THE WITNESS: There is one left, and that is the Boilermakers. They don't specify the period. They simply say that the member must attend such meetings as the Local By-Laws require. That accounts for the 12 Unions which are on this table as having mandatory requirements.

[309] MR. DONOGHUE: We have no further questions at this time, your Honor.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. GOTTESMAN:

Q. Mr. Lahne, do I correctly understand that this table shows only those provisions that appear in the Constitutions of International Unions?

A. That is correct.

Q. In compiling this table, was that the only source which was looked to?

A. That is correct.

Q. In other words, if the Union has a standard By-Laws, which are to become binding on each of its Local Unions, which is a document separate from its Constitution, that was not looked at—

A. I'm sorry. I would like to correct that.

We looked at all the documents. We considered that those standard By-Laws are part of the National Constitutions.

Also I might say these Constitutions were submitted under the requirements of the Landrum-Griffin Act, with which I am sure you are familiar. In some cases the Constitution itself was submitted for an earlier [310] year and supplemented by the annual reports that these Unions are required to make. So that in some cases it is a combination document, a printed Constitution plus the annual report which the Union is required to make when it changes its Constitution.

In other words, the Union may not choose to reprint the entire Constitution, say, in 1967 when it has only one change over 1965. So we use the 1965 Constitution, plus the documents submitted to the Department of Labor indicating the change in 1967.

Q. Now, Mr. Lahne, you did not in preparing this table look at any provisions which appear in Local Unions' own Constitutions or By-Laws?

A. We did not.

Q. This is a chart that deals with eligibility requirements for Local Union elections, is that not right?

A. That is correct.

Q. Having in mind your position as an expert in this field, you do know that there are at least some Local Unions that provide such requirements in their own By-Laws?

A. Yes, I do.

Q. Did you make any effort to ascertain how many Local Unions having how much membership have their provisions in their own By-Laws?

[311] A. I did not.

Q. Do you have any basis to make an estimate as to how many Local Unions?

A. You mean of the total Local Unions in the country?

Q. Yes.

A. Only my some 30 years looking at Local Union Constitutions in other connections and dealing with Local Unions, speaking to Local Union members and officers.

Q. No systematic effort has been made to determine—

A. No systematic effort has been made to tabulate the total number of Local Union Constitutions, which is in the neighborhood of 45,000—I'm sorry, there are some 45,000 Local Unions, and there has been no systematic tabulation by anyone of the requirements in these Constitutions in this regard.

THE COURT: Then of the 68 per cent of the membership, wherein the International does not provide for any attendance requirement qualifications for running for office, we don't know whether—maybe all of those Local Unions do provide for it and maybe none of them do, we don't know.

THE WITNESS: Yes, your Honor, that is correct, we do not

know the exact—an exact figure. It [312] is entirely possible some have them and some do not.

BY MR. GOTTESMAN:

Q. Now, I gather that means then for each International Union which appears on this chart, with a little dash, signifying no provision in its International Constitution, that we are provided no knowledge as to how many, whether it be none, some or all of its Local Unions have on their own adopted a meeting attendance requirement?

A. That is correct.

Q. Am I correct also in understanding that the only eligibility requirement with which this chart deals is meeting attendance?

A. Correct.

Q. Are there other provisions that appear in the Constitutions of some or all of the Unions here, which also qualifies the right of the members to run for office in the Union?

A. Yes, sir.

Q. Would you say at least some such provision appears in the Constitutions of all the 56 Unions which do not have a meeting attendance requirement?

A. I don't understand your question. Some such what?

Q. Are there at least some eligibility require-[313] ments, other than simply being a member of the Union?

A. Yes, there are. There are some requirements which are practically universal in Union Constitutions.

Q. Now, are there some requirements in at least some of these Constitutions which are intended to serve purposes comparable to those you understand the meeting attendance requirement to serve?

THE COURT: Let's find out first what he understands the meeting requirement—

THE WITNESS: I was just about to—

BY MR. GOTTESMAN:

Q. All right. Can you tell us, from your experience in this field, what you understand to be the purpose of the meeting attendance requirement?

A. As I understand, the Union's position as to meeting attendance requirement—I am not referring only to the Steelworkers but to other Unions which have it, and even the Unions that don't

have it who have discussed with me the desirability or undesirability of having it—there is the understanding or let us say the hopeful belief that attendance at meetings makes a member acquainted with Union affairs, so that if he desires to run for office he will have some knowledge of Union affairs and Union problems.

[314] THE COURT: Now, then your next question.

BY MR. GOTTESMAN:

Q. The next question is, are there Unions on this list who have provisions other than meeting attendance provisions which are intended to serve that same purpose, namely, to assure we have officers who have some knowledge and familiarity with Union affairs?

A. Well, it is a little hard to answer the question the way you put it.

If I may refer to the universal, practically universal qualifications for holding Union office, some of these might be so construed.

For example, that a member be—a person be a member of a Local for at least one year is virtually a universal requirement.

Now, I suppose the answer there would be that this could be intended to serve the same purpose.

The second virtually universal requirement is the requirement that the member be in good standing. There is one which is not as universal but very common, that the member be employed at the trade. This is especially true in craft Unions.

I think there may be one or two others, but there are about three possibly four qualifications which are universal among the Unions.

[315] As to the meeting attendance, as—I'm speaking of National Constitutions—it is not that common. There are other uncommon ones, for example, prior office holding is an uncommon requirement, a very rare requirement; more rare than even the meeting attendance requirement.

Q. But there are some International Unions that have a prior office holding requirement?

A. I think there are only two.

Q. Are those two on this list?

A. Let me see, now. The Maritime Union was one and, of course, that case was litigated and the Maritime Union has now removed that provision, or at least—

Q. At the time of this election?

A. June '67. I guess that is true at the time of June '67, they did.

The Garment Workers have such a provision but it is rather qualified. It can be avoided by attending a training school in lieu of holding prior office. I think those are the only two offhand. I haven't memorized all the Constitutions of all Unions.

Q. To your knowledge are there any other provisions designed to assure qualifications, other than meeting attendance and these two you just mentioned and [316] those you have mentioned earlier?

A. There are, for example, some Unions have a citizenship requirement. There are—in addition to positive requirements there are negative aspects. For example, criminals, Communists—

THE COURT: He is talking about requirements that—

THE WITNESS: Which qualify a person positively, in the affirmative sense.

THE COURT: No. He is talking about requirements from which you could conclude the Union was insisting that the candidates have an acquaintance with the Union business.

THE WITNESS: I see. Yes, in that sense I think I have mentioned only those—period of membership in the Local is the primary one.

THE COURT: Is there any requirement as to the period of time the man must belong to the Union?

THE WITNESS: I think that was litigated in one case where the time was five years and the Court considered that to be too long for a Local office.

THE COURT: There was nothing indicated as to what the Court felt was a reasonable period of membership?

THE WITNESS: I believe the Court at that [317] time indicated that—I can only go by my memory—I think three years. I think the Court said possibly two or three years might be acceptable, but the Court didn't lay down any rule, but they felt five years was too long.

THE COURT: There has been no litigation of this period—of any period with respect to the attendance of meetings?

THE WITNESS: Oh, yes, there has been litigation on that. I assume our attorneys will cite all the cases.

Actually, the meeting attendance—in the Glass Bottle Blower cases. There are several of those.

BY MR. GOTTESMAN:

Q. Those cases involved a provision, I think, on your chart that the Local required attendance of 75 per cent of the meetings?

A. In three years. Yes, I believe—

THE COURT: And that was held to be too severe?

THE WITNESS: Yes, The period of time,—

THE COURT: Wasn't it 75 per cent that was held to be unreasonable?

THE WITNESS: Sometimes, your Honor, if you will excuse me, it is just a little hard to know just—

[318] THE COURT: Did the Court say the three-year period was excessive?

THE WITNESS: It was 75 per cent two years and the Court simply said it was unreasonable. I don't remember any other details from the decision.

THE COURT: All right.

THE WITNESS: It may be that—

THE COURT: There is an exhibit already in here—I don't have the number of it—which refers to that case and says 75 per cent.

MR. GOTTESMAN: Defendant's Exhibit T, I believe, your Honor.

THE COURT:

> "The Court concluded that the requirement of 75% attendance at Union meetings was too high when combined with a strict rule regarding excused absences which permitted a member to be excused only when he was required to work on the job while the meeting was being held. The Court also stated that a rule which, as in this case, limits the eligible group to 2.2% of the membership seems to be too harsh."

That certainly makes good sense, so far as I am concerned.

* * * *

[319] Q. —to your knowledge has any Court ever held a 50 per cent meeting attendance rule invalid?

[320] A. I don't recall any. But I will have to say again here—

* * * *

[323] Q. Just one last question. As I look at this and look at the rankings of the Unions in the order of their members, am I correct in noting that the largest, the third largest and the fifth largest of the Unions on your table have a meeting attendance requirement of one form or another in the International Constitution?

I'm referring to the Teamsters, Steelworkers and I believe it is the Machinists.

A. Well, I haven't examined that. The [324] Teamsters and the Steelworkers, of course, I know to have a requirement. The Machinists have a Local option.

MR. GOTTESMAN: I have no further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. DONOGHUE:

Q. Mr. Lahne, could you tell the Court why you looked at National Constitutions and not Local Union Constitutions?

A. Because it was a National Union Constitution provision which was involved in this case.

Q. Based upon your expert opinion, would you think it would be likely for a Local Union Constitution to contain a meeting attendance requirement as a qualification of their right to be a candidate, absent a mandatory provision in a National Constitution?

A. I would think that only a minority of Local Unions will have such a provision if it is not required by the National Constitution.

Q. In your opinion, would you say attendance at Union meetings is necessary in order for a member to become knowledgeable about the affairs of the Union?

* * * *

[325] THE WITNESS: Yes, my opinion on the meeting attendance rule, I might say, might not necessarily be that of the Secretary of Labor.

My opinion on a meeting attendance rule just happens to coincide with the Secretary's but for different reasons. I believe the meeting attendance rule is not necessary to give the member a knowledge of what transpires in the Union and what the Union's problems are, in order to become a better officer.

BY MR. DONOGHUE:

Q. Could you tell us what other ways are available, based on your knowledge and experience, as to how they gain this knowledge?

A. Union members secure a great deal of [326] knowledge by Union affairs and problems within the Union, issues within the Union, through the talk that goes on in the shop, at the work place and away from the work place, about Union affairs.

Union meetings, as they are presently constituted, especially in Unions with anywhere from a couple of hundred members up to many thousands, tend not to be town hall type meetings but rather to be delegate type meetings unofficially.

Those whose offices in the Union or activity in the Union, such as shop delegate, committeemen, informal leaders in the shop, those who go to the meetings report back to the shop and are expected to and are questioned by people in the shop about what went on in the Union.

I might say this is a subject on which I wrote an entire article, which is listed in the sheet which the Court has, which received a prize from the American Psychological Association, as the best study of the relationship of psychological factors to industrial matters, and it has been cited hundreds of times and reprinted hundreds of times.

THE COURT: Mr. Lahne, the fact that there might be a better way to acquaint the members with the business of the Union—when I say "better" I mean [327] better than requiring meeting attendance—let's assume, for the purposes of discussion, that there is a better way to do it,

It doesn't necessarily follow their requirement of meeting attendance as a means of accomplishing that purpose is unreasonable.

THE WITNESS: No, there are many—

THE COURT: There are different ways.

THE WITNESS: There are different ways.

THE COURT: And you might think and I might agree with you that one or two ways were better, it still wouldn't make the meeting attendance unreasonable unless the requirement was such as specified in these cases, if the requirement were such that it made it so onerous and made it so difficult for the membership to comply with it that it would be deemed unreasonable.

THE WITNESS: Yes. I would say there are several ways of

doing it and the informal way appears to be the most prevalent, since most Unions do not require you have a meeting attendance rule, they find—at least they believe and I know of no evidence that Unions with a meeting attendance rule get any better officers or are any better governed than those without such rules.

So there are these several ways. The vast majority of the Unions have preferred to rely upon [328] these other ways, rather than upon meeting attendance.

THE COURT: Now, there are 68 per cent we don't know what the Locals do, aren't there?

THE WITNESS: In terms of an exact survey that is correct.

THE COURT: You feel the minority of them that would have—

THE WITNESS: The small minority would have the meeting attendance rule.

BY MR. DONOGHUE:

Q. Would you tell the Court what you would say are the qualifications universally found in Constitutions?

A. I think we went through this. Good standing, a period of membership in the Local, these are the two which are most frequent.

Q. In your opinion would you say that a member who met the universal qualifications is more qualified or less qualified than a person who has to attend a certain amount of meetings to qualify as a candidate?

A. I wouldn't say he was more or less. I would say, depending upon his interest in finding out about Union affairs, whether he attends a meeting or not, if he meets these universal qualifications he is on a par with everyone else.

[329] Q. Based upon your experience do you find that Unions that have these meeting attendance requirements as qualifications has increased attendance at Union meetings?

A. No, they have not. As a matter of fact, it appears practically nothing, your Honor, which can increase on any permanent basis the low attendance at normal routine Local meetings.

From door prizes—I have been places where the meeting lasted just long enough to say, "There's beers at the back" and the attendance was no better than at the place where they had fines put

on attendance, where they had meeting attendance requirements for eligibility, except in crises times of contract negotiations and election of officers if they are hotly contested. Meeting attendance at Local meetings runs along on the low plane.

MR. DONOGHUE: I have nothing further.

THE COURT: Anything further?

RECROSS EXAMINATION

BY MR. GOTTESMAN:

Q. Mr. Lahne, I don't want to challenge your qualifications. Are you certain provision of beer has no effect on meeting attendance?

[330] A. Well, there weren't many more people there at that meeting and it happened to be a meeting of rough and tough guys, Operating Engineers. This one I happen to remember was in Baltimore. I didn't realize until the middle of the meeting that this Local was under trusteeship. No one mentioned it at the beginning of the meeting.

But I had gone to another meeting in the same city just the day before and there wasn't much difference in attendance.

Q. You stated as your view that you don't think meeting attendance is a particularly good way to assure qualifications or that it is a necessary way?

A. It is not a necessary way. It is not necessary to qualifications. I don't say it is not one of the ways.

Q. That was going to be my next question.

There are reasonable men, are there not, that concede that there is a relationship between meeting attendance and qualifications, who see it differently than you do in that respect, one of whom is Secretary of Labor, at least, in his Interpretive Manual?

A. I am free to disagree with the Secretary.

Q. Pardon me?

A. I am free to disagree with the Secretary.

[331] THE COURT: He is asking you if you do in this regard.

THE WITNESS: Well, as a matter of fact, until you read that exhibit I was unaware the Secretary had taken that position.

BY MR. GOTTESMAN:

Q. Well, based on the position as expressed in that Manuel that

was read in court yesterday, are you in disagreement with the position stated there?

A. If you will give me the exact language I will be glad to state my disagreement.

MR. GOTTESMAN: Would the clerk give the witness Exhibit T, and maybe another one or two.

THE COURT: I think it was one of the letters, wasn't it?

MR. GOTTESMAN: One of the letters, I think. Also Exhibit Q.

THE WITNESS: Let's see, I have Exhibit H here.

THE COURT: T and Q.

MR. GOTTESMAN: I believe it is T. It has an "H" and "T" on the bottom.

THE WITNESS: That is correct. Which part are you referring to of this exhibit?

[332] BY MR. GOTTESMAN:

Q. The second paragraph relating to the 50 per cent, the two years meetings. The second marginal numbered paragraph.

A. Yes, I disagree with the Secretary.

Q. Thus far, as I have understood your testimony, you have talked about your views about the necessity for fulfilling one of the functions of the meeting attendance rule, or, at least, one function, namely, having more qualified officers.

Let me suggest to you some other possible justifications for it and tell me whether you think these are equally unreasonable or less unreasonable or not unreasonable at all.

Might not an International Union have as one of the objectives in requiring such a provision the desire to have a system of checks and balances, whereby those who are, in fact, dissatisfied with the performance of the incumbent officers, and who would be inclined to run against them, would be motivated by the meeting attendance rule to actually attend the meetings and therefore have a check on what the incumbent officers are doing by the mere fact they are there?

A. Now, what does your question relate to?

Q. The question is, is that an unreasonable [333] reason for the Union to have a meeting attendance requirement?

A. It might be a given reason but I don't see it as a valid reason.

Very often dissatisfaction is expressed by non-attendance at meetings.

Q. Isn't it true that very often dissatisfaction is also expressed by attendance at meetings?

A. That is true. But, as I say, dissatisfaction, a feeling it is useless to go to a meeting, for example, because you are not allowed to talk. The women especially have been known and in my presence have walked out of meetings where altercations have started, and there is no doubt about their dissatisfaction with the Union, but they will not attend the meeting.

Q. You are not suggesting that in the Locals of the Steelworkers—

A. I am not suggesting as to any particular Local.

Q. I want to be clear. Assuming that, in fact, it is not the history of Steelworkers Local Unions, or this one, that members are not allowed to talk or altercations are common at the meetings, so that those barriers to an opponent desiring to attend are removed?

A. I would say there is a little of this in practically every Union one place or another.

[334] Q. I am not asking for a confirmation that we are pure and wholesome, but I am asking whether with these barriers removed there is, in fact, some reason for an International Union to desire that?

THE COURT: He has already testified that attendance is not an unreasonable requirement to assure acquaintance with business. He has already testified to that, in answer to my question, so there is no reason to go into great detail about this, and conduct a laborious examination on this. I mean he has admitted that.

He thinks there are other ways that are better, but he say that this is a reasonable way.

Isn't that what your testimony has been?

THE WITNESS: Well, I would say, your Honor, it is a reasonable way if it is not too restrictive.

THE COURT: Of course, if it is not too restrictive. That goes along with it. That was included in my question.

THE WITNESS: I might philosophically, even if a hundred per cent of the members qualified under the rule, I would still, as a matter of making elections as unrestrictive as possible, not personally care for the rule.

THE COURT: Why, surely, I can under-[335] stand that. You have indicated that.

MR. GOTTESMAN: I have no further questions.

EXHIBIT P

LEGEND

This table shows, for 72 national unions, representing 89 per cent of the total union membership, which national unions do or do not require attendance at local union meetings as a prerequisite to nomination or election to local union office. The date is as of June 1967, the date of the election in this case. Where no figures or footnotes appear on any line, it indicates that the national union constitution has no meeting attendance requirement of any kind—either optional or mandatory.

Attendance at Union Meetings as a Requirement for Nomination or Election to Local Union Office, as Provided by National Union Constitutions and Bylaws, June 1967 [1]

National union [2]	Date of constitution	Number of members [3] (000)	Attendance requirements [4]	
			Number or per cent of meetings	Number of months
Total	72	17,059	(.... 72 ....)	
Constitutions with provision	16	5,476	(.... 16 ....)	
Actors & Artists	6/65	62	—	—
Auto Workers	4/67	1,403	—	—

[1] This table includes all national unions covered by the Labor-Management Reporting and Disclosure Act having more than 40,000 members as listed in the *Directory of National and International Labor Unions in the United States, 1967,* Bureau of Labor Statistics, Bulletin No. 1596, 1968, and having 1 or more affiliated local unions filing under the LMRDA. Bulletin No. 1596 does not report membership for the United Mine Workers (Ind.); however, this union is included on the basis of its membership reported in the *Directory of National and International Labor Unions in the United States, 1963,* Bureau of Labor Statistics, Bulletin No. 1395, May 1964. The constitutions analyzed are those in effect in June 1967, according to reports required under LMRDA that were filed with the Department of Labor.

(See page 48 for footnotes)

National union [2]	Date of constitution	Number of members [3] (000)	Attendance requirements [4]	
			Number or per cent of meetings	Number of months
Bakery & Confectionery Workers	8/66	83	—	—
Bakery & Confectionery Workers (Ind.)	10/65	61	—	—
Barbers	1/66	72	—	—
Boilermakers	5/65	140	(5)	(5)
Bookbinders	1/65	62	—	—
Brewery Workers	10/65	55	—	—
Bricklayers	9/66	149	—	—
Carpenters	1/67	800	—	—
Chemical Workers	10/66	93	—	—
Clothing Workers	5/66	382	—	—
Communications Workers	6/66	321	—	—
District 50-UMW (Ind.)	4/65	232	[6] 50%	6 (N)
Electrical Workers-IBEW	9/66	875	—	—
Electrical Workers-IUE	1/67	320	—	—
Electrical Workers-UE (Ind.)	12/65	167	—	—
Engineers, Operating	4/64	330	Majority	6 (E)
Firemen & Oilers	5/66	45	—	—
Garment Workers Ladies	7/65	455	—	—
Glass Bottle Blowers	7/66	68	75%	24 (E)
Glass & Ceramic Workers	9/66	48	[7] 33-1/3%	[7] 12 (N)
Hotel & Restaurant Employees	7/66	450	—	—
Industrial Workers, Allied	9/65	83	—	—
Iron Workers	1/65	162	—	—
Laborers	10/66	475	—	—
Laundry Workers (Ind.)	5/65	63	—	—
Lithographers & Photoengravers ...	1/66	53	—	—
Longshoremen	8/63	80	—	—
Longshoremen & Warehousemen (Ind.)	4/67	60	—	—
Machinists	4/67	836	(8)	(8)
Maintenance of Way Employes	7/66	141	—	—
Marine & Shipbuilding Workers ...	10/66	43	(9)	(9)
Maritime	10/66	45	—	—
Meat Cutters	7/64	353	—	—
Mine, Mill & Smelter Workers (Ind.)*	10/65	75	—	—
Mine Workers, United (Ind.)	10/64	245	[6] 50%	6 (N)
Molders	8/66	80	—	—
Musicians	9/66	252	—	—
Office & Professional Employees	6/65	70	—	—

(See page 48 for footnotes)

National union [2]	Date of constitution	Number of members [3] (000)	Attendance requirements [4]	
			Number or per cent of meetings	Number of months
Oil, Chemical & Atomic Workers ...	8/65	165	—	—
Packinghouse, Food & Allied Workers	5/66	135	—	—
Painters	1/65	201	—	—
Papermakers & Paperworkers	10/66	144	—	—
Plasterers	1/65	68	—	—
Plumbers	1/67	285	—	—
Printing Pressmen	1/66	114	—	—
Pulp, Sulphite & Paper Mill Workers	9/65	171	[10] 2	6 (E)
Railroad Trainmen	1/65	185	[11] 7	36 (E)
Railway Airline & Steamship Clerks..	8/64	270	—	—
Railway Carmen	1/64	126	Majority	12 (E)
Retail Clerks	7/63	500	—	—
Retail, Wholesale	5/66	170	—	—
Rubber Workers	11/66	170	(12)	(12)
Seafarers	6/67	80	—	—
Service Employees**	1/65	348	—	—
Sheet Metal Workers	1/67	100	—	—
Shoe Workers	6/67	53	—	—
Stage Moving Picture Operators ...	7/66	62	—	—
State, County, Municipal Employees.	11/66	281	—	—
Steelworkers	9/66	993	50%	36 (E)
Teachers	1/67	125	—	—
Teamsters (Ind.)	10/66	1,651	[13] 50%	24 (N)
Telephone Unions, Alliance (Ind.)..	6/59	75	—	—
Textile Workers-TWU	6/66	182	—	—
Textile Workers-UTW	9/64	47	—	—
Transit Union	1/66	103	[14] 12	24 (E)
Transport Workers	5/66	135	(15)	(15)
Typographical	1/67	107	—	—
Upholsterers	9/66	58	—	—
Utility Workers	6/67	72	—	—
Woodworkers	12/65	94	—	—

(See page 48 for footnotes)

[2] National unions are identified by short-form titles as used in the *Register of Reporting Labor Organizations,* Labor-Management Services Administration, 1968; complete titles are shown on pp. vii-xv of that publication. National unions are affiliated with the AFL-CIO, unless identified as Independent (Ind.).

[3] Source: *Directory of National and International Labor Unions in the United States, 1967,* Bureau of Labor Statistics, Bulletin No. 1596, 1968. The 72 national unions included in this table account for approximately 89 per cent of the membership of all national unions reported in Bulletin No. 1596.

[4] Attendance requirement shows the number or per cent of meetings which a member must attend during the prescribed number of months immediately preceding the nomination (N) or election (E) of local officers.

[5] Member must attend regular meetings of the Lodge as required by Local Lodge Bylaws to establish eligibility.

[6] Member must attend 50 per cent of meetings during each month; if local holds only 1 meeting each month, member must attend all 6 meetings.

[7] Member must attend 1 meeting per quarter in each of the 4 quarters prior to nomination.

[8] Local bylaws *may* provide an attendance requirement not to exceed 50 per cent of the meetings held in the 12-month period preceding nominations.

[9] Local bylaws *may* require attendance at a minimum of at least 1 meeting per quarter during the 8 calendar quarters preceding the quarter in which nominations are made.

[10] Member must not be absent from more than 2 successive meetings.

[11] Member must attend at least 2 meetings in each of the 2 years preceding the year of election, and 3 meetings in the year of election.

[12] Local bylaws *may* provide an attendance requirement not to exceed 50 per cent of the meetings held in the 12-month period preceding nominations. However, this provision may be suspended by the Local Union Executive Board prior to nominations upon a proper showing that there is an insufficient number of members who meet such attendance requirement.

[13] Mandatory for locals which do not have own bylaws. Locals with own bylaws *may* provide lesser requirements.

[14] Member must attend 6 meetings during each year.

[15] Local bylaws *may* require attendance at a "reasonable" number of meetings during the period preceding nominations or elections.

* Merged with Steelworkers July 1967.

** Formerly Building Service Employees.

LMSA/OLMPD

February 1969

EXHIBIT Q

February 29, 1960

The Honorable Robert W. Kastenmeier
House of Representatives
Washington 25, D. C.

Dear Congressman Kastenmeier:

This is in further response to your letter of January 19, 1960 in which you requested information regarding the election eligibility requirements in the constitution of the International Union of the United Steelworkers of America. The request for information came to you from Mr. Elmer Dunkel, 721 North Pair Oaks Avenue, Madison 4, Wisconsin.

In our opinion, a provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members. It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership, as for example, where the local had an extensive geographic jurisdiction. Under the Act, the question of whether a particular qualification is reasonable rests with the courts. The Secretary does not have enforcement authority in this matter.

Sincerely yours,

JOHN L. HOLCOMBE
Commissioner

EXHIBIT R

November 25,1966

Honorable Jonathan Bingham
House of Representatives
Washington, D. C. 20515

Dear Congressman Bingham:

In reply to your inquiry relating to the letter which you received from Mr. Thomas McAdam I can advise you as follows:

Mr. McAdam filed his complaint with the Secretary of Labor on May 29, 1966, alleging violations of the Labor-Management Reporting and Disclosure Act in connection with the election of officers of Lodge 1085 of the Brotherhood of Railway Carmen of America.

The complaint was thoroughly investigated by the Office of Labor-Management and Welfare-Pension Reports; that Office found no violations of the law which may have affected the outcome of the election except in the following circumstances.

Section 481(e) of the Act provides that every member in good standing shall be eligible to be a candidate subject to "reasonable qualifications uniformly imposed." Mr. McAdam and most of the other union members were ineligible to be candidates because Section 26 of the constitution of this organization provides:

> "Any member who desires to be elected to any office in his lodge, must have attended a majority of the meetings of the Brotherhood Railway Carmen of America in the 12 months immediately preceding the month of election unless unable to attend for just and sufficient reasons. A member shall be required to advise the Recording Secretary in a written statement justifying his absence, and this to be done in the current month; a majority vote of the members in attendance at the meeting to determine acceptance or rejection of the offered excuse. A record of attendance and excuses for absence to be kept by the local lodge."

Although Mr. McAdam and other members working nights could

have been excused from attending meetings, none of them ought to be excused.

The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. Consequently, civil action on behalf of the Secretary of Labor was filed on May 28, 1966 in the U. S. District Court for the Southern District of New York.

Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.

The question of whether a qualification on office holding is in itself reasonable is a matter which is not susceptible of precise definition. It cannot be said, however, that under all the circumstances, the meeting attendance requirement of Lodge 1085 imposes an unreasonable burden upon the union members. For this reason, the Department has determined to withdraw the case from court and will do so as soon as appropriate papers for this purpose are prepared.

Sincerely yours,

SAMUEL V. MERRICK
Special Assistant for
Legislative Affairs

EXHIBIT S

December 5, 1966

Honorable Jacob K. Javits
United States Senate
Washington, D. C. 20510

Dear Senator Javits:

In reply to your inquiry relating to the letter which you received from Mr. Thomas McAdam I can advise you as follows:

Mr. McAdam filed his complaint with the Secretary of Labor on May 29, 1966, alleging violations of the Labor-Management Reporting and Disclosure Act in connection with the election of officers of Lodge 1085 of the Brotherhood of Railway Carmen of America.

The complaint was thoroughly investigated by the Office of Labor-Management and Welfare-Pension Reports; that Office found no violations of the law which may have affected the outcome of the election except in the following circumstances.

Section 401(e) of the Act provides that every member in good standing shall be eligible to be a candidate subject to "reasonable qualifications uniformly imposed." Mr. McAdam and most of the other union members were ineligible to be candidates because Section 26 of the constitution of this organization provides:

> "Any member who desires to be elected to any office in his lodge, must have attended a majority of the meetings of the Brotherhood Railway Carmen of America in the 12 months immediately preceding the month of election unless unable to attend for just and sufficient reasons. A member shall be required to advise the Recording Secretary in a written statement justifying his absence, and this to be done in the current month; a majority vote of the members in attendance at the meeting to determine acceptance or rejection of the offered excuse. A record of attendance and excuses for absence to be kept by the local lodge."

Although Mr. McAdam and other members working nights could

have been excused from attending meetings, some of them sought to be excused.

The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. Consequently, civil action on behalf of the Secretary of Labor was filed on May 28, 1966 in the U. S. District Court for the Southern District of New York.

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The question of whether a qualification on office holding is in itself reasonable is a matter which is not susceptible of precise definition. It cannot be said, however, that under all circumstances, the meeting attendance requirement of Lodge 1085 imposes an unreasonable burden upon the union members. For this reason, the Department has determined to withdraw the case from court and will do so as soon as appropriate papers for this purpose are prepared.

Sincerely yours,

FRANK M. KLEILER
Director

Enclosure

EXHIBIT T

Excerpts from U. S. Department of Labor,
LMRDA Interpretative Manual

ATTENDANCE AND PREVIOUS EXPERIENCE

422.205 ATTENDANCE AT 6 OF 12 UNION MEETINGS MAY BE REASONABLE

A provision requiring that to be eligible as a candidate for office a member must attend six out of twelve meetings during the year, if applied fairly and uniformly to all members, would not in ordinary circumstances, be an unreasonable qualification of the right to be a candidate for union office, within the meaning of section 401 (e) of the Act.

422.206 12 OF 24 MEETINGS MAY BE REASONABLE

A provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members. It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction.

422.208 75% ATTENDANCE REQUIREMENT HELD UNREASONABLE

In a suit by the Secretary of Labor to set aside a local union election, the court concluded that a provision of the local bylaws requiring attendance at 75% of the regular meetings of the local for a two year period since the last previous election in order to be eligible as a candidate for office is not a "reasonable" qualification within the meaning of section 401(e).

The court concluded that the requirement of 75% attendance at union meetings was too high when combined with a strict rule regarding excused absences which permitted a member to be excused only when he was required to work on the job while the meeting was being held. The court also stated that rule which, as in this

case, limits the eligible group to 2.2% of the membership seems to be too harsh. *Wirtz* v. *Local 153, Glass Bottle Blowers* (U.S.D.C., W.D., Pa.), Aug. 28, 1965, 244 F. Supp. 745, 60 LRRM 2020, 52 L.C. 16,626.

422.250 PARTICIPATION IN UNION AFFAIRS

Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications they are not to be considered unreasonable in themselves.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

TERRE HAUTE DIVISION

TH 70-C-117

PETER J. BRENNAN, Secretary of Labor,
v.
LOCAL 3489, UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS AT TRIAL

May 10, 1973

[22] Department of Labor received the complaint as filed by Mr. Frye on or after September 24, 1970.

THE COURT: The Court has that matter under consideration. The Court will rule on that at the end of the hearing.

MR. SERWER: Your Honor, at this time the Government will call Mr. McCloud.

HARRY McCLOUD, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. Mr. McCloud, would you state your full name to the Court, please.

A. Harry McCloud, M-c-C-l-o-u-d.

2 Q. What is your current address?

A. 2429 Locust.

3 Q. Are you currently employed, Mr. McCloud?

A. I am retired.

4 Q. On what date did you retire?

A. I believe that it was on the 12th of January, 1972.

5 Q. 1972?

MR. LAWSON: Your Honor, may the witness speak up a little bit?

THE COURT: Mr. Witness you will have to speak as loudly as you can. The attorney over at the other table needs to hear you, and we are getting a lot of noise from the outside. There is no air conditioning here and the windows are open. Mr. Witness, you will need to speak as loudly as you can.

A. I think it was January 12, 1972.

6 Q. Were you previousiy employed before your retirement?

A. At Stran Steel Corporation.

7 Q. When were you first employed?
Is that Stran, S-t-r-a-n?

A. Right.

8 Q. When were you first employed by Stran Steel?

A. I think that it was June 26, 1964.

9 Q. During the year of 1970, sir, were you continuously employed by Stran Steel?

A. Yes, sir.

10 Q. Throughout the period of employment by Stran Steel, sir, were you a member of any Local Union organization?

A. 3489, sir, United Steelworkers.

11 Q. Was that true also during the year of 1970?

A. Right [23]

* * * *

[44] needed to attend at all in order to receive credit for that meeting.

THE COURT: Why don't you just ask the witness that question then?

MR. SERWER: All right.

THE COURT: Does this man keep the records?

MR. SERWER: Your Honor, I do not believe that he is the primary person that kept the records at the Hall.

And perhaps he may not have personal knowledge of that, and perhaps I could ask him.

May I ask him?

THE COURT: Well it has been stipulated here that the average attendance—

MR. SERWER: Was 47.

THE COURT: Was it 47 or 57?

MR. SERWER: 47.

That, Your Honor, only reflects the number of people signing the register.

THE COURT: Mr. Lawson, is that true?

MR. LAWSON: Your Honor, I think that the attendance records are kept by the person signing the register.

THE COURT: What paragraph is it that says what the average meeting attendance is?

(Whereupon Mr. Lawson tendered a document to the Court.)

THE COURT: It has been stipulated that the average meeting attendance at the Union meeting during this three-year period —I do not see the paragraph here, however, counsel says that it is "47"; is that correct?

MR. LAWSON: Correct, Your Honor.

MR. SERWER: Paragraph 9-C, Your Honor.

THE COURT: It is "47".

MR. SERWER: Right.

THE COURT: Mr. Witness, you said that you attended ten or twelve meetings —

I see. It says 47 members per meeting and this is 9-C.

Mr. Witness, you said that you attended ten or twelve meetings: In your opinion, would there be as many as 47 persons there each time, or not?

WITNESS McCLOUD: In my opinion, that is entirely wrong.

You could not get that many out.

We have had a lot of meetings when you were lucky to get ten men there to constitute a meeting.

THE COURT: I see.

For the purposes of the record, Mr. Witness, if you wanted to come and stay a while, you could then come in and sign the register and leave at will?

WITNESS McCLOUD: Yes, sir.

THE COURT: Is that correct?

WITNESS McCLOUD: Yes, sir.

THE COURT: Did you do that sometimes, yourself?

WITNESS McCLOUD: I remember that on two occasions I did.

THE COURT: Did you hold a position in the Union?

WITNESS McCLOUD: I held no office in the Union while I was there, other than the tellers job.

THE COURT: Were you appointed or elected?

WITNESS McCLOUD: Appointed.

THE COURT: Do you have further questions, Mr. Serwer?

MR. SERWER: One moment, Your Honor.

(Whereupon a conference was had among co-counsel.)

MR. SERWER: No further questions of this witness, Your Honor.

Your Honor, I would like to call the next witness.

THE COURT: Just a moment.

Counsel would like to cross-examine.

MR. SERWER: Thank you, Your Honor. I am sorry.

THE COURT: Mr. Lawson, you may cross-examine.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

92 Q. Mr. McCloud, from the period of 1967 to 1970: There were two meetings per day; is that correct?

A. Yes, sir.

93 Q. In other words, sir, so that other people on different shifts could attend the meetings?

A. Yes, sir.

94 Q. So when you say that you attended certain meetings, sir, you did not say that you attended both meetings?

A. No.

95 Q. You were a member of this Local from 1964 until [47]

* * * *

[58] WILLIAM A. LOWE, JR., a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. Would you state your name, please.

A. William A. Lowe, Jr.

2 Q. Your current address?

A. 2413 South 8th.

3 Q. What city, please?

A. Terre Haute.

4 Q. Are you currently employed?

A. Yes.

5 Q. By whom?

A. Stran Steel.

6 Q. How long have you been employed by Stran Steel?

A. Approximately six years.

7 Q. Are you a member of any Local Labor Organization?

A. Yes. Local 3489.

8 Q. How long have you been a member of that Local?

A. For approximately six years.

9 Q. Were you a member of that Local in June of 1970?

A. Yes, I was.

10 Q. I will now refer you to the date of June 22, 1970: Did you have an occasion to vote in a Local Union [58]

* * * *

[67] THE COURT: Proceed, Mr. Serwer.

(Continuing)

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

49 Q. Can you recall the number of voters that went to the back room to vote? Sir, this would be during the period of time that you were there in the Hall.

A. Personally, sir, I did not see anyone carry a ballot into the back of the Hall.

50 Q. During the three-year period, sir, during June of 1967 through May of 1970: Did you attend any Local Union meetings?

A. Yes, sir, I did.

51 Q. How many, sir, if you can recall?

A. Approximately ten.

52 Q. Did all of the members at the meetings that you attended, sir, did they come in on time or did some of them come in late?

A. There was always somebody that came in late.

53 Q. Did you ever observe persons coming in late and signing the attendance register?

A. Oh, yes.

54 Q. Similarly, during the meetings that you did attend, during this three-year period: Did all of the members at the meeting, sir, did they stay until the end of the meeting?

A. No. They would come and go at any time.

55 Q. Can you recall how frequently persons left early?

A. Oh, it usually happened at every meeting. They would get up and leave or come in late. Sir, this would happen at every meeting.

56 Q. Did you ever leave early?

A. Yes, I have.

57 Q. On those occasions, you had signed the attendance register?

A. Oh, yes.

58 Q. Did you ever come in late?

A. No. I never did come in late.

59 Q. Can you recall on those occasions that you came into the Hall, sir, how early you might have left?

A. I usually stayed fairly long for the meeting.

After they had started the old business and finished—and if there was anything that I wanted to stay for, and after that was over with, sir, then I left.

60 Q. Did you observe other persons leaving early?

A. Oh, yes.

61 Q. And how early did they leave?

A. There were some that came in and signed and turned around and left before the meeting started.

MR. LAWSON: Your Honor, I would object to all of this. This seems to me that it is very speculative and it seems to me that it has little or no probity value, or any relationship to this issue.

MR. SERWER: Your Honor, I am talking about —

MR. LAWSON: Your Honor, we are talking about a period of 36 months, three years, and whom could have gone in or out — and it is obvious that the witness is attempting to be cooperative, and he is not testifying to any real personal knowledge as to the conduct of the meetings.

THE COURT: I think that your objection goes to the weight of the testimony. It is rather evident, and the testimony as to the attendance is given and it is not related to any particular meeting within the three-year period, Mr. Serwer.

In other words, the objection is overruled.

Mr. Witness, did you ever hold any office in the Union?

WITNESS LOWE: No, I have not.

THE COURT: It has been stipulated here that an average of 47 persons attended each meeting; and that would be more for one meeting and less at others. Would that seem like a correct figure? Sir, would this be too many or would this be too few, as an average?

WITNESS LOWE: Forty something?

Your Honor, I would say that was too many.

MR. SERWER: Your Honor, I would like to make something clear here. To the extent that this witness personally attended a split meeting, meaning one of two meetings held per month, Your Honor, he would have no knowledge as to the total number — he only attended one meeting of the split meetings.

Your Honor, the questions that I have asked do not go to whether there were 47 persons present at any one individual meeting. Your Honor, the question goes to whether a member can come in and sign in and leave, and whether he receives credit for that meeting. Your Honor, then he could subsequently run at some years later for an office, and he in fact, had never attended a meeting by merely signing and leaving, or whether he had attended just a half of a meeting.

MR. LAWSON: Your Honor, I think better proof should be offered to establish that than what has been testified to here.

MR. SERWER: Your Honor, I simply indicated as to what this line of testimony is going to.

I thought there was some confusion here as to the line of questioning and I wanted to clarify that.

THE COURT: That goes to the weight of the evidence. It indicates that the man had enough interest to come in and sign the register, regardless of how long he did stay.

MR. SERWER: That may be true.

THE COURT: Can this witness explain for us the arrangement of the split meetings?

MR. SERWER: Your Honor, I think that Mr. Lawson would know, and I am sure that he may be willing to stipulate, and I think this is within the stipulation: The Local Union had two meetings per month so as to accommodate the different shifts.

THE COURT: The day shift and the night shift?

MR. SERWER: Yes, Your Honor.

Then there was a period of where they only had one meeting on Sunday.

MR. LAWSON: Your Honor, that is paragraph 9-B of the stipulation.

MR. SERWER: That is correct.

THE COURT: Let the record so show. The matter is stipulated. Mr. Serwer, you may continue.

(Whereupon a conference was had among co-counsel.)

MR. SERWER: No further questions.

THE COURT: Mr. Lawson, do you have any questions of this witness?

MR. LAWSON: A few, Your Honor.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

62 Q. Mr. Lowe, do you know how many chairs there were in the Union Hall on the election day?

A. The exact number, no.

63 Q. Could you estimate, approximately, sir?

A. I would say approximate one hundred to one hundred twenty chairs.

64 Q. So at any time that these people wanted to, sir, was there any restrictions for any one of the [72]

* * * *

[76] THE COURT: You may call one more short witness before we recess for noon.

MR. SERWER: Your Honor, at this time the Government will call Mr. Frye.

B. G. FRYE, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. State your name, please.
A. B. G. Frye.
2 Q. What is your address?
A. 1304 South 7th, Terre Haute, Indiana
3 Q. Are you presently employed?
A. No.
4 Q. Have you been previously employed?
A. Yes, sir.
5 Q. When was your position terminated?
A. Yesterday at 4:00.
6 Q. By whom were you employed?
A. Stran Steel Corporation.
7 Q. When were you first employed by Stran Steel?
A. In 1963.
8 Q. Has your employment been continuous, or were there [76]

[82] WITNESS FRYE: Everybody was voting in front of everybody; the walls, chairs, the table and the officer's bench.

THE COURT: Was there any campaigning for the officers going on there at that time?

Were you doing any campaigning for yourself?

WITNESS FRYE: None, Your Honor, other than being there.

THE COURT: Other than just being there. Was anyone campaigning for Mr. Uzzell?

WITNESS FRYE: No, sir.

THE COURT: Continue, Mr. Serwer.

(By Mr. Serwer)

41 Q. During the period of June of 1967, and May of 1970, can you recall how many Local Union meetings you attended?

A. According to the record, sir, it was stated that at that time I attended 35 out of 37 meetings.

42 Q. During the period of June of 1970 and May of 1973, sir, do you know how many meetings you attended during that period of three years?

A. It would be the same amount of meetings.

43 Q. Now, sir, can you describe what happens when a person walks into the room, typically, into a Union meeting? [82]

* * * *

[86] approach to this case is really way beyond the latitude that should be given to the Government, and the issues that they are talking about, Your Honor.

THE COURT: Well, the Court does not want to predetermine the issue. However, it shows wide latitude was extended to anyone that wanted to show any interest in the Union meetings. All that you had to do was come and sign up, and leave at will. You could come in late and there was no one there to say that you were late, and that we are not going to record you for this meeting; is that correct?

MR. LAWSON: Precisely.

I don't know whether the Government is seeking to argue that you cannot run for office unless you stay for the whole doggone meeting; I don't think that is what they are after. However, I am not quite sure.

MR. SERWER: Your Honor, well —

THE COURT: Mr. Lawson, your objection is overruled.

You may continue your questions.

Counsel may argue this later.

52 Q. To your knowledge, sir, during this three-year period had

anyone ever been reprimanded for arriving late for a meeting, after the meeting had started?

A. No.

53 Q. How often does that occur? How often did that occur during that period?

A. At every meeting.

54 Q. How many people did arrive late?

A. It varied at different meetings. However, there were many people coming in late. Sir, I could not set down an actual number, that would be impossible.

I have seen the time when ten or fifteen guys would show up late.

55 Q. Is there any rule, to your knowledge, prohibiting a person from signing in and leaving early?

A. No.

56 Q. Has anyone ever been disciplined for doing that?

A. No.

57 Q. To your knowledge, has that occurred?

A. Has what occurred?

58 Q. A person signing in and leaving early?

THE COURT: The Court considers that irrelevant.

A. Some people sign in and leave right away, — as long as they get their name on the book.

59 Q. To your knowledge, sir, was it the general custom between June of 1967 and May of 1970, for persons upon entering the room to sign the register?

MR. LAWSON: I think that he has already answered that question.

He testified that the first thing when they came in was to sign the register.

Your Honor, that would be repetitious.

MR. SERWER: Will you stipulate that that was his answer?

MR. LAWSON: I think that it is a matter of record.

THE COURT: I think he just changed his answer.

What is your answer to that question, Mr. Witness?

WITNESS FRYE: He stated a date here.

It is customary now, and we are pushing the guys to sign the book. We realize the mistake there. But prior to 1970, Your Honor, the average man would just come in and sit down.

We started pushing the fact that we had to keep the attendance record in order for the men to run for office. Since that election, Your Honor, we have pushed it and made sure that the men sign the books.

Up until that time quite a few of the men would walk in and sit down and not even sign the book at all, and there was no effort made to have them sign it.

THE COURT: In your opinion, has the attendance increased within the last three years, over the prior three years?

WITNESS FRYE: Your Honor, I would say, yes.

THE COURT: Who keeps the records of the attendance now?

WITNESS FRYE: The recording secretary keeps the books. However, nobody sits at the door.

THE COURT: The book is back at the door near the entrance so that the members can sign in? And someone makes the statement that if you want to be recorded as being here, you will have to sign the book?

WITNESS FRYE: The people in the Hall usually tell them to sign the book.

THE COURT: Proceed, Mr. Serwer.

MR. SERWER: Just one moment, Your Honor.
No further questions, Your Honor.

THE COURT: Mr. Lawson.

MR. LAWSON: Just one moment, Your Honor.
(Whereupon a conference was had among co-counsel.)

CROSS-EXAMINATION,
QUESTIONS BY MR. LAWSON:

60 Q. Mr. Frye, you lost in the 1970 election; is that correct?

A. Yes.

61 Q. Thereafter, Mr. Uzzell, who was the winner, sir, he moved up to foreman in the company; is that correct?

A. This is correct.

62 Q. At that time the vice-president of the Local moved up to president?

A. Yes.

63 Q. Then was there an election between you and Mr. Jet for vice-president?

A. Yes I would say so.

Sir, I was a trustee at the time —

64 Q. That you ran for office against Mr. Jet?

A. Yes.

65 Q. In that election, sir, was that election conducted the same way as the election in 1970?

A. All of our elections are handled pretty much the same way, with the exception of this last one.

66 Q. You lost that election to Mr. Jet; is that correct?

A. By some twelve or fifteen votes, yes.

67 Q. Did you ever protest that election?

MR. SERWER: Your Honor, this is entirely outside of the scope of direct examination.

Your Honor, I fail to see the relevancy —

MR. LAWSON: Your Honor, I think that he is alleging that it is unfair —

MR. SERWER: It is outside of the scope of direct examination and I fail to see the relevancy —

MR. LAWSON: He is alleging that it is unfair, and he ran again in another election, and he lost by much less margin, and he did not protest, sir, under the same conditions.

This is extremely relevant.

MR. SERWER: Your Honor, one election has nothing to do with the other election.

We are talking about whether the election held in June 22, 1970, was by a secret balloting [91]

* * * *

[97] you then get credit for that meeting?

A. Yes.

95 Q. What is the minimum length of time that you spent at a meeting?

A. Myself?

96 Q. Yes.

A. As an officer, I generally tried to attend the whole thing.

97 Q. Prior to your being elected an officer, sir, how long would you stay?

A. I would say that it would vary.

We are talking about quite a time.

98 Q. All right.

Let us pass on from that.

Since 1963, sir, there have been elections every three years; regular election for officers, right?

A. Yes, sir.

99 Q. Have there also been other elections in between?

A. Yes, sir.

100 Q. Is the reason for those other elections, sir, because of vacancies?

A. Yes, sir.

101 Q. —people resigning from office?

A. Yes.

102 Q. Is it fair to say that during the ten years that you have been with the Local, sir, that there has been a large turnover in officers within the Local?

A. I would say, yes.

103 Q. In the election in 1970, the winner, Mr. Uzzell got 154 votes, and you received 79; is that correct?

A. I would not know for sure.

104 Q. Is that approximately right?

A. I have no idea right now.

I was probably told at the time but I do not remember right now.

If that is what you say, it must be true. I do not remember.

MR. LAWSON: One minute, Your Honor.

(Whereupon a conference was had among co-counsel.)

105 Q. Mr. Frye, you were elected to vice-president, sir, of this Local since 1970; is that correct?

A. Yes.

106 Q. You ran unopposed for that office; is that correct?

Did Mr. Stewart oppose you, let me ask you [98]

* * * *

[101] RECROSS-EXAMINATION,
QUESTIONS BY MR. LAWSON:

117 Q. Were you instructed not to go to the chair to mark your ballot?

A. No, sir.

118 Q. Or anywhere else?

A. No, sir.

THE COURT: You mentioned that you were terminated at Stran Steel: Did they have a layoff or something?

WITNESS FRYE: No. I got fired the other day because of Union activities.

THE COURT: Are you a candidate in this next election?

WITNESS FRYE: Yes, Your Honor.

THE COURT: For what office?

WITNESS FRYE: President.

THE COURT: President.
Who else is a candidate for president?

WITNESS FRYE: Mr. Clay Jet, Mr. Forsythe and a Mr. Davis.

THE COURT: Do they all fill the requirements of having attended the necessary meetings?

WITNESS FRYE: Three of them have and one has not.

THE COURT: Does Mr. Forsythe qualify again?

WITNESS FRYE: Yes, he does.

THE COURT: What was the fourth person's name?

WITNESS FRYE: Davis.

THE COURT: He does not qualify?

WITNESS FRYE: No, sir.

THE COURT: I have no further questions.
Would either counsel have any additional questions?

MR. SERWER: No further questions, Your Honor.

RE-RECROSS-EXAMINATION,
QUESTIONS BY MR. LAWSON:

119 Q. Have you called that to the attention of the election officers, that Mr. Davis does not qualify?

A. That is not my job.

120 Q. Would you object to him running against you?

A. No, sir. I think that he is a very intelligent person.

121 Q. Thank you.

MR. LAWSON: Thank you, Your Honor. [102]

* * * *

[108] DAVID LEROY JONES, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,
QUESTIONS BY MR. SERWER:

1 Q. What is your name, please?

A. David Leroy Jones.

2 Q. What is your current address?

A. 29 Oakland Avenue, Terre Haute, Indiana.

3 Q. Were you ever employed by Stran Steel?

A. Yes, sir.

4 Q. During what period of time?

A. May of 1967 up until September of 1970.

5 Q. At that time did you leave your employment?

A. Yes, I did.

6 Q. During this period that you were employed by Stran Steel, sir, was that work continuous?

A. No. I was in the service during this period of time, also.

7 Q. Do you recall the dates that you were in the service?

A. June of 1967, sir, until June of 1969.

MR. SERWER: Your Honor, I would ask that the Court Reporter mark this document for identification?

THE COURT: The Reporter will mark the document.

(Whereupon the Court Reporter marked a document for identification.)

8 Q. Mr. Jones, I will hand you what has been marked as Government's Exhibit No. 2. It purports to be a document DD2-

14, and the person named therein is named "David Leroy Jones", and can you describe what this document is?

A. It is a DD2-14, and it is a release from active duty.

9 Q. For what person?

A. Myself.

10 Q. Is the information thereon, sir, true and correct, to the best of your knowledge?

A. Yes, it is.

MR. SERWER: Your Honor, I move that this document be introduced in evidence; offered and received in evidence.

MR. LAWSON: Your Honor, I rise to ask for what purpose is this offered?

MR. SERWER: Your Honor, to firmly establish the dates that the witness was in military service.

THE COURT: I do not think there is any dispute about it. Show the exhibit admitted in evidence.

(Whereupon Government's Exhibit No. 2 was admitted in evidence.)

(Here insert)

THE COURT: Continue, Mr. Serwer.

11 Q. Mr. Jones, what was the exact day of your entry into military service?

A. June 27, 1967.

12 Q. What was the date of your release from military service?

A. June 26, 1969.

13 Q. Would you describe in chronological order, sir, your location geographically while in the military service during this period of time?

A. I first went to basic training at Fort Campbell, Kentucky. Sir, from there I went to AIT down in Alabama, and back to Fort Campbell for a regular duty assignment and I was there until about September of 1968.

14 Q. Continue.

A. And until I was released I was at Fort Riley, Kansas.

15 Q. During your two-year period, sir, what was your closest location to Terre Haute, Indiana?

A. About 220 to 230 miles.

16 Q. For how long a period of time during this two-year period?

A. About 9 months.

17 Q. Referring you now to the year of 1970: When did you return from service? Was that June of 1969?

A. Yes.

18 Q. Did you go back to your employment?

A. Yes, sir.

19 Q. At what employer?

A. Stran Steel.

20 Q. Did you attend any Local Union meetings during this period of time?

A. I did attend a few of them.

21 Q. I'm sorry.

A. After I returned.

22 Q. In the month of May, 1970: Were there nominations for Local office?

A. Yes, sir.

23 Q. Were you nominated at that time?

A. I was.

24 Q. On the date of June 22, 1970, sir, was there an election of officers?

A. There was.

25 Q. Did your name appear on that ballot?

A. It did not.

26 Q. Had you ever received any notification prior to the day on which the election was held, sir, that your name would not appear on that ballot?

A. No idea.

27 Q. Did you receive any information on the day of the election, sir, as to why your name was not on the ballots?

A. No, I did not.

28 Q. Calling your attention to the 22nd day of June, 1970: The election was held at the Union Hall; is that correct?

A. Yes, it was.

29 Q. On 13th Street?

A. Yes, it was.

30 Q. What were your hours of work during this day?

A. From 8:00 to 4:00, I believe.

31 Q. What time of day did you vote?

A. It was after I got off work at 4:00.

32 Q. About what time of day, sir; do you have any idea?

A. Between 4:15 and 4:30, I believe.

MR. LAWSON: Your Honor, could the witness speak a little more loudly?

THE COURT: The witness is reminded to [112] * * *

* * * *

[116] meeting Hall: Approximately, sir, how many persons, including yourself, were in the Hall?

A. Twenty, twenty-five or thirty.

MR. SERWER: Excuse me, Your Honor.

(Whereupon a conference was had among co-counsel.)

MR. SERWER: Your Honor, I have no further questions.

THE COURT: Any questions, Mr. Lawson?

MR. LAWSON: Yes, Your Honor.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

52 Q. Mr. Jones, you had not attended eighteen meetings, obviously, between May of 1967 and June of 1970; is that correct?

A. No. Not actually.

53 Q. You were in the Army for two years; is that correct?

A. Yes, sir.

54 Q. In the year that you returned, sir, how many meetings did you attend?

A. I cannot say offhand. Sir, it was two or three for sure. I made up there —

55 Q. When you were nominated, sir. did you talk with anyone or did you check with anyone concerning the —

A. Yes, I did.

56 Q. — concerning your eligibility?

A. Yes.

57 Q. Continue.

A. I asked two or three of the men down there and they said that the service counted as part of my being — the same as being on the job.

58 Q. Did you talk with the election tellers?

A. No, I did not.

59 Q. Did you talk with the president of the Local?

A. No, I did not.

60 Q. When you say "men", do you mean other members of the Local?

A. Other members of the Local.

61 Q. Nonofficers?

A. No. I do not believe that they were. I could not tell you offhand whether they were or not.

62 Q. Am I correct: You did not pay dues while you were in the military?

A. No.

63 Q. At the time that you say that you voted: Sir, did you say there were twenty or twenty-five people in the Hall; is that correct? [117]

* * * *

[121] THE COURT: You may call your next witness, Mr. Serwer.

MR. SERWER: Your Honor, I will call Mr. Wilford Wassel.

WILFORD WASSEL, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATIONS,

QUESTIONS BY MR. SERWER:

1 Q. Would you state your name, please.

A. Wilford Wassel.

2 Q. Will you spell your last name?

A. Yes. It is W-a-s-s-e-l.

3 Q. What is your current address?

A. 2632 South 7th.

4 Q. Terre Haute?

A. Terre Haute, Indiana.

5 Q. Are you currently employed?

A. Yes.

6 Q. Who are you employed with?

A. Stran Steel Corporation.

MR. LAWSON: Your Honor, I would request that counsel keep his voice up.

THE COURT: Speak as loudly as you can so that everyone can hear.

7 Q. Are you a member of Local Union 3489?

A. Yes, sir.

8 Q. This would be of the United Steelworkers of America?

A. Yes, sir.

9 Q. Were you a member of this Local Union at the time of the June 22, 1970 election at the time of the election for Local officers?

A. Yes, sir.

10 Q. Did you vote in that Union election for officers on June 22, 1970?

A. Yes, sir.

11 Q. Where did you cast your ballot?

A. At the Union Hall.

12 Q. What time did you arrive at the Union Hall on that day?

A. It was approximately between a quarter after and a quarter until five. I cannot give you the exact minute, sir.

13 Q. Do you recall how long you were in the Union Hall when you voted?

A. The total length of time when I arrived in the door and when I left?

14 Q. That is right. [122]

* * * *

[128] There was conversation going on and what they were saying, I do not know specifically.

41 Q. Mr. Wassel, turning to the Union meetings: During the period of June of 1967 and 1970, the three years just prior to the June 22, 1970 election —

A. Okay.

42 Q. Did you attend any of the Union meetings during that period?

A. Yes, I did.

43 Q. Do you recall the number of meetings that you attended?

A. It was either seven or nine meetings during all of those three years.

I did not attend all of the meetings.

44 Q. Was it your custom to sign the attendance register upon entering, or arriving at the meeting?

MR. LAWSON: I am sorry. I did not hear the question. Counsel, please keep your voice up?

MR. SERWER: Yes.

45 Q. Was it your custom upon arriving at a meeting, sir, to sign your name on the attendance register?

A. Yes, sir.

46 Q. In fact, at the meetings that you did attend: Did you, in fact, sign the register upon arriving at the meetings?

A. Yes, I signed.

47 Q. Did you ever, sir, on occasion arrive at the meeting late and sign in?

A. Yes, sir.

48 Q. Do you recall the number of meetings that you arrived late at?

A. Well —

49 Q. During that three-year period?

A. It is hard to say that I attended the meetings and wrote my name.

I would not know the exact number on how many times I was late.

50 Q. Do you have any idea how late you were and what they were doing when you arrived late?

A. They would be reading the old business.

At that time I would say that it would be about ten to twelve minutes late.

51 Q. Did you ever, on occasion, sir, after signing in late at a meeting, leave the meeting prior to the end of the meeting?

A. Yes.

52 Q. How many times did you do that?

A. I would say three times. Roughly, I would say about three times.

Sir, this could vary one either way.

53 Q. Do you recall what the earliest time after the start of a meeting, sir, that you left after signing in?

A. It all depended on how mad I got.

54 Q. Can you recall the approximate number of minutes after the start of the meeting, sir, that you left after signing in?

A. Twenty-five to thirty minutes.

55 Q. What was the usual length of a meeting, sir; the ones that you attended?

A. One hour — forty-five minutes.

56 Q. Is that one hour and forty-five minutes, sir?

A. One hour and forty-five minutes.

57 Q. With regard to those meetings that you attended during the three-year period: Did you observe any other Union members who had signed in — signing the meeting attendance register and they left early before the end of the meeting?

A. Yes.

58 Q. Do you recall the number of other Union members, sir, the ones that you saw sign in and leave early?

A. Well a lot of people walked out during the middle of a meeting.

Sir, this would be a big variation in number. Do you want the overall average?

59 Q. Can you tell us the approximate number at any given meeting, sir; the ones that you attended?

MR. LAWSON: I think this line of testimony and this inquiry is unspecific.

Your Honor, I would like to have this pinned down more.

Your Honor, this line of questioning is objectionable.

MR. SERWER: Your Honor, this is —

MR. WASSEL: Your Honor, I do not know that "average" and "indeed", I do not know if they make much sense.

MR. SERWER: Your Honor, I think that he is able to testify to the average number of Union members that walked out at any given meeting.

MR. LAWSON: Is it two, three or four —

THE COURT: The objection is overruled. The witness may answer.

A. Several.

60 Q. Do you recall, sir, observing any other Union members arriving late and signing in at their late arrival time?

A. Yes.

It is back there for them to sign when they come in.

61 Q. Do you recall the number of Union members that you saw engaged in that activity? Sir, this would be at the meetings that you attended?

A. Would you repeat that question?

62 Q. Do you recall the number of Union members, sir, the ones that engaged in that activity of arriving late and signing in at their late arrival?

A. With an average of fifteen people there at the meeting, sir, it would vary from two to three people. Sometimes it would be more and sometimes it would be less.

63 Q. On occasion, sir, did you ever see somebody sign in late — did you ever see someone else sign a name besides his own?

A. Once I seen a man sign two names.

64 Q. Continue.

A. I do not know who he signed, but I seen him write two names.

Whether he was signing in for someone that would possibly be there later, or maybe they had been there and left and had forgotten to sign their name — sir, I don't know.

However, I did see him sign two names.

65 Q. Can you tell us whether you ever observed anybody sign in on the register at the beginning of the meeting and leave immediately thereafter?

A. Yes. I saw it for an emergency.

MR. SERWER: No further questions, Your Honor.

THE COURT: You said "emergency", Mr. Witness; what particular person do you remember doing that? Do you remember any particular incident?

WITNESS WASSEL: Yes, Your Honor.

THE COURT: Tell us who that was?

WITNESS WASSEL: Who the person was?

THE COURT: Yes.

WITNESS WASSEL: Roy Mix.

THE COURT: Do you remember what his emergency was?

WITNESS WASSEL: He had to go and pick his wife up.

THE COURT: When would this have been?

Was it before 1970, Mr. Witness? Was it near 1970 —

WITNESS WASSEL: I would say that it was in the year of 1969.

Your Honor, I could not even give you the exact date on it.

There were a lot of people that would stay there; they would sign in and stay there for the old business and then they would leave.

THE COURT: Okay.

WITNESS WASSEL: It happens.

THE COURT: Mr. Lawson, you may cross-examine.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

66 Q. Mr. Wassel, in 1970 there was a nomination meeting held in May; is that correct?

A. True.

67 Q. Were you nominated for any offices?

A. No. I was not, sir.

68 Q. Have you ever been an officer in the Union?

A. No.

69 Q. How long have you worked for Stran Steel in this Union?

A. Since August of 1967.

70 Q. You are here under subpoena?

A. Yes, sir.

71 Q. At the time that you voted in June of 1970: You signed in, as I recall, and you received your ballot and then you marked your ballot at what [134] * * *

* * * *

[143] sitting in chairs and voting.

On the other hand by use of personal ingenuity a person could very likely cover his own particular ballot, if he wanted to prevent other people from seeing his ballot, or seeing how he voted. Also if he did not care whether other people saw him, then he probably voted in a different fashion and did not cover up his ballot.

I would say that the conclusion is that the conduct of the voting process is such that no one is encouraged to vote in secret; even though there was no one there who was preventing it. Any individual could have separated himself from the group so that while he marked his ballot, it would not have been seen.

In reference to the attendance at Union meetings, it seems there was a sign-in book, at least from June of 1967 to May of 1970, which was a three-year period prior to the 1970 election.

Again, it was done in what might be described as an informal manner; it was a sign-in book or a registration book that was located there. The very nature of this book was such that, and various witnesses have testified, a person could come in and he could be late and he could sign in and get credit for attendance. He could sign in and stay any length of time that he might desire and then he could leave early if he so chose and he would still get credit for attendance at that meeting. The registration book, or the sign-in book, apparently is in the custody of the recording secretary. And since the events leading up to this cause of action here, it would appear that there has been more attention paid to the fact of being certain that each member signed in if he wanted to receive credit for attendance at a meeting.

That does not cover everything that has been testified to here, and special testimony has been received on other matters, and the testimony of Bernard Frye who ran for office. I would consider this to be the common thread of testimony running through these five witnesses.

What additional has been running in common in their testimony that the Court has not stated, Mr. Serwer?

MR. SERWER: Your Honor, may I have approximately thirty seconds to confer with my co-counsel?

THE COURT: Certainly. [144]

* * * *

[148] That new witnesses should only testify to new matters and you should avoid further evidence or repetition on these subjects.

With that, Mr. Serwer, you may go ahead and call any additional witnesses that you see fit.

MR. SERWER: At this time I would call Mr. David Shadrach.

DAVID R. SHADRACH, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

1 Q. Would you state your full name for the Court, please?

A. Yes. David R. Shadrach.

2 Q. Your current address?

A. My business address is 36 South Pennsylvania, Indianapolis, Indiana.

3 Q. Your present occupation?

A. I am a Residence Compliance Officer for the Labor Management Services Administration of the United States, and the Department of Labor.

4 Q. How long have you been so employed?

A. Since 1962.

5 Q. Can you roughly describe the function of a Residence Compliance Officer?

A. Our agency administers three statutes and one executive order. One of which is the Labor Management Reporting and Disclosure Act, and part of that Act contains Title IV. Title IV consists of the minimum standards of controlling a Local Union election, officer election.

6 Q. At some time subsequent to June 22, 1970, sir, were you assigned to conduct an investigation?

A. Yes.

7 Q. — of the election of officers that was held in June of 1970? Sir, that is June 22, 1970.

A. Yes.

8 Q. Of Local 3489?

A. Yes, sir.

9 Q. I will show you what has already been marked as Exhibit D. This is attached to the Stipulation of Facts — Your Honor, this is attached to Exhibit No. 1 and it has already been admitted in evidence — sir, I will ask you if you recognize that document?

A. Yes, I do.

10 Q. What is that document?

A. That document was presented to me by Mr. Baker, the Mr. Baker that was the recording secretary at the time of the investigation of the Union election.

Mr. Baker stated that this was placed on a bulletin board in advance of the nominations.

This list represents members who attended in excess of fifteen meetings during the three-year period involved.

11 Q. There are two groups of members here.

Your Honor, let the record show there is one group containing twenty-two names: Is that correct, Mr. Shadrach?

A. Yes.

12 Q. And above that it states: "Members eligible to run for office", sir, with eighteen meetings or more?

MR. LAWSON: Your Honor, this has all been stipulated to in the record.

MR. SERWER: That is correct. However, I am leading into some questions that are not in evidence at this time.

THE COURT: At this point, Mr. Serwer, the Court thinks it would be appropriate to say, and with reference to the specific points, and just ask him the questions or; you do not need to explain to the Court how this came about.

You and the other counsel have stipulated to it and the Court would assume that it had to be furnished either by the Labor Union or by somebody that was keeping the records; everybody agrees that this is right.

Rather than telling me how each of these stipulations came about, you can just refer to the stipulation in the exhibit and ask your questions about it.

13 Q. Mr. Shadrach, referring you to Government's Exhibit B that is attached to Government's Exhibit No. 1, and it is in evidence —

A. Yes.

14 Q. Prior to your receiving of that document from Mr. Baker: Sir, did you analyze the attendance record, or records, or the attendance register of the Defendant Local to ascertain the number of persons who had attended, sir, the number of persons who had attended at least eighteen or more meetings?

A. No. It was after I received the list from Mr. Baker.

Mr. Baker produced his work sheets that he had computed. He had computed the attendance for each and every member who was listed on the attendance register for this period of time.

15 Q. Did you, yourself, look at the attendance register?

A. Oh, yes.

I compared Mr. Baker's work sheets with the attendance record.

16 Q. What did you find?

MR. LAWSON: I would object to any testimony about the attendance records.

The best evidence to that would always be the register, Your Honor, itself.

MR. SERWER: Your Honor, I could have subpoenaed that document, or the documents, sir, from the defendants, but I did not think there would be any substantial objection here. I was not able to do so in view of the short time for trial.

Your Honor, the defendants can certainly bring the register in, if it proves, if they so desire, if Mr. Shadrach's testimony proves anything other than the register itself.

The register is in the possession of the defendants.

MR. LAWSON: I really don't know.

THE COURT: What is the purpose of this line of questioning, Mr. Serwer?

MR. SERWER: I am simply trying to verify that his independent investigation confirms the fact that persons on this list were, in fact, the only persons who had their names appear on the attendance register at least eighteen times.

MR. LAWSON: We stipulated to that.

MR. REESE: Your Honor, we stipulated to that.

MR. SERWER: Will you stipulate to what I just stated?

MR. LAWSON: Is that any different from what we have already stipulated to?

THE COURT: I will ask the questions.

Mr. Shadrach, did you vertify the list of those persons eligible to run for office?

WITNESS SHADRACH: Yes, sir.

THE COURT: According to the records?

WITNESS SHADRACH: Yes, Your Honor.

THE COURT: Did this support the list that is labeled as Exhibit "D"?

WITNESS SHADRACH: Yes.

THE COURT: All right. That will cover the matter.

17 Q. Subsequent thereto, Mr. Shadrach, did you have an occasion to examine work records of Stran Steel Corporation to determine whether any persons had worked according to their records on days that would conflict, days that conflicted with the Union meetings?

A. Yes.

18 Q. What did you determine?

A. Based on the analysis of the attendance register, and the work credits, sir, there were no other members of Local 3489 whose name appeared on the register as having attended fifteen or more meetings; other than the twenty-five names on the list that was provided to me by Mr. Baker.

19 Q. Okay.

A. With the exception of Mr. LaRue with clock number 524, and he attended sixteen meetings and they found out that he worked nine times that would be in conflict with the meetings. Therefore, the sixteen plus nine would be twenty-five —

MR. LAWSON: At this time I would object to any further testimony. It is obvious that this is hearsay, Your Honor, without any records being here, or being produced.

MR. SERWER: Well, Your Honor, again, this is an attempt to save the laborious task of going to Stran Steel Corporation and pulling out all of those records that it would take to make this determination.

The defendant, himself, can do that—and he was aware of the substantial amount of the testimony and I offered to have the defendants stipulate to this.

Your Honor, the defendant refused to stipulate to this.

These are matters that occurred during the investigation here, and I think that they are substantially uncontested; but if necessary, we will bring in all of the records. Your Honor, we can subpoena the records and offer them into evidence to prove that this individual is the only one.

MR. LAWSON: Your Honor, if I may say in response to counsel's statement, and with his intention—Your Honor, on November 29, 1971 I served answers to interrogatories to plaintiff's counsel. At that time I suggested if they were interested in the question of

who had worked and who had not worked that they should contact Stran Steel. Evidently, Your Honor, they have not done so and they have come in with this secondhand sort of testimony.

I have no idea what Stran Steel's records say and I do not know if Stran Steel is terribly interested in giving it to me. I do not know what relevance this has, Your Honor, as a matter of fact, to the issues of which we are involved with here.

MR. SERWER: I think the work credit excuse is certainly relevant, and with the meeting attendance rule.

The defendants have stipulated that they have never made an attempt to ascertain how many people were eligible for Union office, by virtue of full credits.

The investigator here with the Labor Department, Your Honor, has done exactly that and he found one person that was, and that is certainly relevant to the meeting attendance rule.

MR. LAWSON: I do not think that could be accurately — I don't think that accurately reflects the stipulation and I would object to any hearsay testimony of what this so-called investigator or Compliance Officer — I am sorry — this Compliance Officer found.

THE COURT: Upon your investigation, Mr. Shadrach, you found one additional person who would qualify for Union office, or officer, and that was Mr. LaRue; is that correct?

WITNESS SHADRACH: Yes.
He was given an office during that same election.

THE COURT: He was actually elected?

WITNESS SHADRACH: He ran unopposed. In this same election.

In other words, there were only about twenty-two eligible, and there was no one running for this one office, and Mr. LaRue actually ran unopposed. This is why I checked the fact, and I found that he only had sixteen meetings.

Then I went to Stran Steel and I found out there were nine different times when his work schedule conflicted with him coming to a meeting, and this gave him a credit of twenty-five meetings. Therefore, Mr. LaRue was certainly an eligible officer under the eligibility rule, sir, by coincidence.

It is my understanding from Mr. Baker that they do not check work cr[illegible]s. Sir, they only check work credits when requested.

THE COURT: All right.

WITNESS SHADRACH: And no one ever requested them to check.

THE COURT: What was the office that Mr. LaRue was elected to?
What office did he fill?

WITNESS SHADRACH: Not offhand.

MR. SERWER: That is in the stipulation, Your Honor.

THE COURT: What does the stipulation say about that?

MR. SERWER: Exhibit E.

THE COURT: Where is that?

MR. SERWER: Here, Your Honor.
(Whereupon Mr. Serwer tendered a document to the Court.)

THE COURT: The Court recognizes the objection of counsel, the objection by counsel for the defendant. It may have been very proper under the circumstances, but in view of the attempt to proceed with this cause, the Court will permit counsel for the defendant to offer into evidence anything, at a subsequent date, you may file any records or any exhibits to contest Mr. LaRue's qualifications if you so desire.

MR. LAWSON: Thank you, Your Honor.

THE COURT: It would seem to me that the defendants may have waived any objections to Mr. LaRue since he was elected and he did serve.
Under that light of the Court's ruling, you may continue, Mr. Serwer.

MR. SERWER: Thank you, Your Honor.

MR. LAWSON: Just one point, your Honor.
Your Honor, I have never seen the records of Stran Steel, and I have no idea, if any, what the correlation is between the meeting times of the Local, and whether Mr. LaRue did or did not work on

those days. Your Honor, without those records I am unable to effectively cross-examine this witness.

THE COURT: It may be irrelevant.

MR. LAWSON: Of course, that has been raised by me. I hope, Your Honor. Thank you.

THE COURT: Let the record so show. Continue, Mr. Serwer.

MR. SERWER: Your Honor, I have no further questions of this witness.

THE COURT: Mr. Lawson, you may cross-examine.

MR. LAWSON: Your Honor, may I have a moment, please?

THE COURT: You may.
(Whereupon a conference was had among co-counsel.)

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWSON:

20 Q. Mr. Shadrach, Mr. LaRue ran unopposed; is that correct?
A. Yes, sir.
21 Q. That being the case —
A. I think there is a story behind this.
22 Q. I did not ask for a story.
He had meeting attendance in the appropriate eighteen — in the eighteen meetings: Sir, this would not effect his running for office; is that correct?
A. I am not in a position to interpret the constitution and by-laws.
My understanding was that during the investigation that Mr. LaRue was ineligible, and he was so posted on the board, and stated that he would be ineligible for nomination—and he attended below eighteen meetings, so he would not be eligible.
23 Q. But at some subsequent time a determination was made that he was eligible?
A. There was no determination made.
It was my understanding that no one wanted to run for that office, and therefore, sir, they nominated or picked LaRue to run unopposed for that office. There was no one left to run.
24 Q. All right.

A. And on this list he was listed as ineligible.
25 Q. That was the only discrepancy that you found in comparing that list of twenty-five; is that correct?
A. Yes, sir.
26 Q. There are approximately six hundred, sixty members of the Local, roughly?
A. Yes, sir.
27 Q. Thank you.

MR. LAWSON: That is all, Your Honor.

THE COURT: Anything further, Mr. Serwer?

MR. SERWER: One or two questions, Your Honor.

REDIRECT EXAMINATION,

QUESTIONS BY MR. SERWER:

28 Q. I believe that this has been asked. However, to be sure: Based on your investigation of the attendance register and the work credits at Stran Steel, sir, were there any other members of the Defendant Local, other than Mr. LaRue, eligible by virtue of a combination of attendance credits and work credits?
A. No.

MR. SERWER: Nothing further.

THE COURT: Anything further, Mr. Lawson?

MR. LAWSON: Let me check my notes with counsel.
(Whereupon a conference was had among co-counsel.)

MR. LAWSON: No questions, Your Honor.

THE COURT: You may step down.
(Witness Shadrach excused.)

MR. SERWER: Your Honor, I would like to request a two minute recess, please?
I would like to review my notes that I have [162]

* * * *

[170] MR. LAWSON: Thank you, Your Honor.

(DEFENDANT'S CASE)

MR. LAWSON: Your Honor, at this time I would call Mr. Clay Jet.

CLAY JET, a witness called by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. REESE:

1 Q. State your name, please.
A. Clay Jet.
2 Q. Where are you employed, Mr. Jet?
A. Stran Steel Corporation.
3 Q. How long have you been employed there?
A. Since 1952.
4 Q. Continuously since 1952?
A. I have been laid off several times, sir, but it has been continuous service.
5 Q. Where do you live?
A. Route 1, Carlisle, Indiana.
6 Q. Are you an officer of that Local?
A. The president.
7 Q. When were you elected president?
A. I was not elected as president. I filled an office [170]

* * * *

[181] THE COURT: Well, maybe that is right. Mr. Reese, you may develop that information. The objection is sustained.

MR. REESE: Thank you, Your Honor.

58 Q. If you know, sir, how many Union meetings have you attended since the June 1970 election?
A. I would guess it would be somewhere between twenty and twenty-five.
59 Q. Before the June election of 1970, could you give us an estimate as to the number of Union meetings that you attended, or those that you missed?
A. According to the records that Mr. Shadrach checked out, sir, I attended all thirty-six meetings.
60 Q. Do you have an opinion if there have been more members attending the Union meetings since June of 1970, sir, than there had before?

MR. SERWER: Your Honor, I would object. This seems to be irrelevant.

THE COURT: Overruled.

61 Q. What was your answer?
A. I think there has been. Sir, I could not say.
62 Q. To your knowledge, has there been any other complaints filed about the elections in that Local?
A. Yes. There was a complaint filed against our last International election.
63 Q. Who was that filed with?
A. Who was it filed with?
64 Q. Yes.
A. It was filed with the International.
65 Q. Are you talking about an International election?
A. The International. It was the nominations and election.
66 Q. I was directing my question to any Local Union elections.
A. Yes.
67 Q. Is this the only one that you know of in twenty years?
A. Yes, sir.
68 Q. How many Union meetings do you have in that Local, sir, during this period of time—let's say how many meetings do you have per month, or per week?
A. We have one split Union meeting per month.
69 Q. Just briefly, sir, what do you mean by that?
A. At the present time we have a meeting on the second Wednesday of each month, sir, we have a 1:00 P.M. meeting and a 4:30 meeting. Sir, this is set up to accommodate all three shifts.
70 Q. How long has this split meeting been in effect?
A. I cannot give the exact day, but it has been quite a while.
71 Q. Three or four years?
A. Yes.

It has been in effect for approximately three years.

We had one section there where we went to a Sunday meeting for a short while, to try and pick up attendance.

72 Q. The purpose of this split Union meeting is to permit every member to attend the Union meeting if they want to; is that correct?
A. Right.
73 Q. Right after the election in June of 1970: Is that when you went back to the split meetings?

A. No. Sir, I cannot be exactly sure, but I believe that it was some time before.

74 Q. Before the June election in 1970?

A. Yes.

75 Q. Thank you.

MR. REESE: No further questions, Your Honor. [183]

* * * *

[185] MR. REESE: Your Honor, we would call Mr. Baker.

THE COURT: Mr. Bailiff, would you get the witness.

(Whereupon a conference was had among co-counsel.)

THE COURT: Have you been sworn as a witness?

WITNESS BAKER: Yes, Your Honor.

THE COURT: You are still under oath.

C. D. BAKER, a witness called by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION,
QUESTIONS BY MR. REESE:

1 Q. State your name, please.

A. C. D. Baker.

2 Q. Where do you live, Mr. Baker?

A. Route 1, Box 194, West Terre Haute, Indiana.

3 Q. Are you employed?

A. Yes, sir.

4 Q. Where?

A. Stran Steel Corporation.

5 Q. How long?

A. Twenty-five years in July.

6 Q. Are you a member of the Local Union?

A. Member?

7 Q. Yes, are you a member of the Local?

A. Yes.

8 Q. How long have you been a member?

A. All of that time.

9 Q. Are you now an officer in the Local Union?

A. A trustee.

10 Q. Have you held any other offices in the Local Union?

A. Yes, sir.

11 Q. What offices have you held?

A. Recording secretary two different times, financial secretary and trustee once—the first time.

12 Q. Directing your attention to June of 1970—

A. Yes.

13. Q. Were you an officer at the time of the election in June of 1970?

A. No. That was the change of officers, and I did not run for office.

14 Q. Did you have anything to do with the conduct of the election?

A. Yes, sir.

15 Q. Tell His Honor what?

A. I was the teller for the election. [186]

* * * *

[193]

60 Q. Have you had an occasion to examine the minutes of the Local Union meetings?

A. Recently?

61 Q. Yes.

A. No, sir.

62 Q. What are these books (indicating)?

A. Those are minute books.

63 Q. Minute books of what?

A. Of the regular and special meetings.

64 Q. But you have not examined those?

A. Not since I was the recording secretary.

65 Q. We have a stipulation here, sir, that there was an average number of members present at a Local Union meeting: Would these minute books show exactly how many members attended?

A. No, sir. Sir, the attendance records would show that information.

66 Q. Who would have that information?

A. The recording secretary.

67 Q. Did you have it when you were the recording secretary?

A. Yes, sir.

68 Q. Again, when were you the recording secretary?

A. Up to the election in 1970.

69 Q. Up until that time you would have kept the attendance records?

A. Yes, sir.

70 Q. Tell me about that book: How was it used at the meetings?

A. Do you mean the attendance book?

71 Q. Yes. Sir, I do mean the attendance book.

A. At first we had the members to sign the sheet, a yellow—you know like the legal size paper. This has the signature of the men and their clock numbers. Then later after the meeting, I transferred this information, the signature and clock numbers into a bound book. This was the second recording.

The original minutes were kept in a file.

72 Q. By you?

A. Yes, sir.

Then a motion was made to use a ledger book, rather than using the yellow sheets.

73 Q. Was that approved?

A. Yes, sir.

74 Q. Approximately when did you go from the yellow sheets to the ledger book?

A. I imagine that it was two years ago, sir, or better.

75 Q. Continue.

A. It would tell this in the minute books.

76 Q. Now, sir, when a member attended a Union meeting, whether they were using a pad or the register: Would the member sign that pad, or the register?

A. They would sign it when they attended the meetings, yes.

77 Q. Where would this pad or register have been kept?

A. Generally it was kept at the front door as they came in.

78 Q. Would it be there during the whole meeting?

A. Yes. Sir, in most cases it was.

79 Q. Then when the meeting was over you would take it—

A. Either me or the guard would bring it up to the recording secretary.

80 Q. Would either the pad or the register be accessible to any member of that Local if they wanted to look at it?

A. Not readily, no.

81 Q. What do you mean by that?

A. It was kept in the file.

82 Q. I understand that.

Sir, if I am a member of the Local, and assume that I made a request to see that, Mr. Witness, would you have shown that to me?

A. You could have seen it in my presence.

83 Q. That is what I mean.

A. Yes, sir.

84 Q. Did you ever have any requests from any people, or members, during the time that you were the secretary, did anyone ever request to look at it?

A. Yes, sir.

85 Q. —the registration or pad?

A. Yes. It was possibly one or two times.

86 Q. Would you cooperate and let them see the book?

A. It is their book, sir, as well as mine.

87 Q. I understand that.

My question is: You would, I take it?

A. Yes, sir.

88 Q. While you were the recording secretary, Mr. Witness, did you ever receive any complaints about the way that the books and the register was kept? Sir, I am speaking of the method that you used.

A. Any complaints?

89 Q. Yes.

A. There was a discussion on it at the time that we changed to the ledger.

90 Q. Why was that change made, sir, if you know?

A. The reason for it, I do not know. They just wanted it all in a bound book.

91 Q. There has been some testimony here, I think, by a Government witness that he saw on one occasion a member sign two names—

A. Yes.

92 Q. —his own name and apparently some other name.

A. Yes.

93 Q. Did you ever have any complaints during your three years, as recording secretary, about any instances of that occurring?

A. No, sir.

94 Q. Not a single one?

A. I would not say that it was a complaint. This was mentioned to me one time as a father and son.

In other words, one of the gentlemen had signed for both.

95 Q. Okay.

A. This is the only occasion that I can recall.

96 Q. Who would have called that to your attention, do you recall?

A. No, I do not.

97 Q. Did you verify if that was the truth?

A. As far as verifying, sir, I do not suppose—

98 Q. So you do not know whether that occurred or not?

A. No.

99 Q. Okay.

A. Both of the men generally attended the meetings at the same time.

MR. SERWER: Objection, Your Honor. There has been no showing that this witness has actual knowledge of that occurring.

Your Honor, this is mere speculation and conjecture on his part.

THE COURT: The objection is overruled. That goes to the weight of the evidence.

100 Q. Do you know of your own knowledge, Mr. Witness, how many presidents that Local Union has had in the last ten or twelve years?

A. How many what?

101 Q. Presidents.

A. By "presidents", Mr. Reese, what are you referring to?

102 Q. Presidents of the Local.

A. Oh, presidents of the Local.

It would take a little bit of thinking. I would have to go back—

103 Q. Would these minute books help you?

A. Yes. Sir, they should.

(Whereupon Mr. Reese tendered a document to the witness.) [198]

* * *

[202]

MR. SERWER: Thank you, Your Honor.

THE COURT: Mr. Witness, you may look through those and see if you think those are the Union's records for the last several years.

Mr. Baker, approximately how long do those records cover; how many years?

WITNESS BAKER: Your Honor, the first book goes back to 1963. The first minutes were in May.

THE COURT: Does that look like the same set of books that you have had custody of at one period of time or another?

WITNESS BAKER: Yes, sir.

Your Honor, I can tell because this is my own handwriting (indicating).

THE COURT: As quickly as possible, Mr. Baker, go through those records—

WITNESS BAKER: Yes, Your Honor.

THE COURT: I believe those are the records that Mr. Jet testified to—

WITNESS BAKER: Five or six, Your Honor.

104 Q. Five or six.

MR. REESE: Your Honor, it was five or six.

THE COURT: Mr. Jet testified that there were five or six presidents.

THE COURT: I believe that Mr. Jet testified that there were five or six presidents according to his memory.

How is that?

MR. SERWER: Your Honor, we would agree to that.

THE COURT: All right.

That is what the records show up to this time.

MR. LAWSON: Your Honor, in the interest of time might I ask counsel for the Government if the investigation made by Mr. Shadrach, during the investigation by Mr. Shadrach, if he has any records showing the number of presidents, Your Honor, then we might be able to stipulate to that.

MR. SERWER: Your Honor, I would ask Mr. Shadrach.

Just a moment, Your Honor.

(Whereupon a conference was had among counsel.)

THE COURT: Let the record show that counsel is conferring with Mr. Shadrach.

(Whereupon a conference was had.)

WITNESS BAKER: Your Honor, I think that it is four.

MR. SERWER: Your Honor, I think it is obvious that this witness has absolutely no independent recollection as to how many presidents there have been, or does he have any familiarity with any of the substantial portions of the book that he is leafing through now.

THE COURT: He has been a member of the Local and he has worked for Stran Steel for twenty-five years, and it takes a while to refresh your recollection.

WITNESS BAKER: Your Honor, I show five.

There was a brief period when one of the vice-presidents took over.

THE COURT: Mr. Jet said five or six.

WITNESS BAKER: Yes, five.

THE COURT: Proceed with your questioning, Mr. Reese.

105 Q. So that I understand it, Mr. Witness, that was in the period of the last ten years?

A. Yes, sir.

106 Q. Do you have any recollection as to the number, or how many other officers that they may have had in that Local during the last ten years?

A. No. Sir, this is because they changed at every election. Every office does not change at the same time.

In most elections there were certain officers that did not change.

107 Q. How many officers at each election?

A. You have five top officers, and the Grievance Committee.

108 Q. How many years?

A. Three years.

109 Q. Three on the Grievance Committee?

A. No, three years of officers.

110 Q. No.

How many Grievance Committee members did you elect?

A. Five.

MR. REESE: Your Honor, in order to save time, Your Honor, I wonder if we could not substitute a Labor Department's vertification to submit to His Honor the number of officers that this Local has elected in the last ten years?

I wonder if the Government would verify it by any records that they have?

THE COURT: Exhibit E indicates that in the particular election that is in question, that there were places to vote for fifteen different persons. There were three trustees, five on the Grievance Committee, and seven other officers, Mr. Reese, for a total of fifteen.

There were fifteen persons elected at the June, 1970 election.

Mr. Reese, that shows in the stipulation.

MR. REESE: Thank you, Your Honor.

THE COURT: I think the record is clear that there has been a number of officers elected and there has been a number of changes in the officers.

Mr. Witness, there have been four elections and could you state approximately how many changes there have been?

WITNESS BAKER: Approximately forty.

THE COURT: The Court will accept the estimate.

MR. SERWER: Your Honor, what was the answer?

THE COURT: He said there were approximately forty officers. [206]

* * * *

[210] 123 Q. Thank you.

MR. REESE: Thank you, Your Honor.

No further questions, Your Honor.

THE COURT: Mr. Serwer, you may cross-examine.

MR. SERWER: Thank you, Your Honor.

CROSS-EXAMINATION,

QUESTIONS BY MR. SERWER:

124 Q. Mr. Baker, you have testified that there was a certain number of presidents within the last ten years; is that correct?

A. Yes, sir.

125 Q. Did all of those presidents fill out their terms or did they leave prior to the end of their terms?

A. I think that some left before their terms were over.

126 Q. How many?

A. Possibly two.

127 Q. President Uzzell left before his term was over, did he not?

A. Yes, sir.

128 Q. Was he then impeached and then he resigned?

A. There was a trial hearing—

129 Q. Then did he subsequently resign?

A. Yes, sir.

130 Q. Subsequent to the resignation of any of these presidents within the last ten years: How is a new president put into office?

A. Do you mean—

131 Q. Is he simply appointed into office?

A. Do you mean before the expiration of his term?

132 Q. Yes.

Before the expiration of his term as president—

A. When a president resigns, sir, the vice-president steps up and takes over the office of president.

133 Q. How long does the vice-president remain as president?

A. He serves out the term, or until the next election.

134 Q. How long might that be?

A. I think the bylaws state—I am not quite sure.

I think it has to be close to an election time—

135 Q. So some of the presidents within the past ten years, sir, in fact were men who were not elected to that office?

A. They were elected to an office, but not president.

136 Q. Not elected to president?

A. That is correct.

137 Q. Now, Mr. Baker, you were at the polling place on June 22, 1970; is that correct?

A. If that is the date. [211]

* * * *

[214] Your Honor, can we have that repeated?

THE COURT: He said that they were certainly visible.

154 Q. With regard to the attendance books that you prepared

and kept during the period of June, 1966 to June of 1970: You did keep those books during that time; is that correct?

A. Yes.

155 Q. What appears on those books?

A. The name of the member and the clock number.

156 Q. Are there signatures on that book?

A. Are you referring to the originals? Sir, are you referring to the yellow copy or the book that I have transcribed?

157 Q. The yellow copy contains signatures; is that correct?

A. They do.

158 Q. The transcript contains your handwriting?

A. Correct.

159 Q. And you utilized both of these records in order to prepare the list which contained twenty-two people who had attended eighteen meetings? Sir, is that correct?

A. Yes.

160 Q. What did you use to determine —

A. The books and records that I had transcribed.

MR. LAWSON: I am sorry. Mr. Baker, I cannot hear you.

A. I used the books to transcribe. I used the book to transcribe the information, sir, because they were all clear and uniform.

161 Q. In those books was there any other indication, or any indication if that person had, in fact, attended a meeting? Sir, I am speaking other than the mere existence that his name was in the book.

Was there anything else there that would prove to you that the man, in fact, had attended a meeting on a given date?

A. Only the fact that I transcribed them from his own signature.

162 Q. Did you verify his signature with a signature that was kept on file at the Union?

A. No.

163 Q. It was simply a signature?

A. True.

164 Q. Was there any indication in either of these two sets of records, sir, to show the period of time that a member would spend at a meeting?

A. We do not keep the time that a man attends a Union meeting.

165 Q. Might he have signed and left?

A. It is possible.

166 Q. It is true, sir, is it not that men come in at all times —

A. Well —

167 Q. — late for a Union meeting?

A. That is true.

168 Q. And they can sign at any time during the meeting?

A. When they first come in.

169 Q. That is correct.

If they come in after the beginning of a meeting, sir, then they sign the register?

A. Yes, sir.

170 Q. And they do?

A. Yes.

171 Q. It is a fact, is it not, that men came in at 2:00 and 2:30 for a meeting that began at 1:00 P.M.?

A. Yes. Sir, this is possible.

172 Q. And they have signed the register?

A. Yes.

173 Q. And there is no penalty for doing so?

A. No.

174 Q. Is it similarly true that those records did not contain any indication as to whether a member had left early or not?

A. That is true.

175 Q. In fact, you have done that on occasions, yourself?

A. Yes, sir.

176 Q. Now during the period of time that you were a teller and you observed the conduct of an election at the Union Hall: Did you instruct voters to go to the back room to vote?

A. No.

177 Q. Did you instruct voters to make themselves — strike that.

Did you instruct voters to prevent their ballot from being seen by others?

A. No, sir.

178 Q. There were simply no voter's instructions as to where or how they should vote; is that correct?

A. That is correct.

179 Q. Throughout the day there was conversation; is that correct?

A. Very little.

180 Q. What about the period after 4:00 P.M. in the afternoon?

A. At 4:00 P.M. the men were interested in getting in and voting and getting out to go home.

181 Q. How many men were in the room at that time? [217]

* * * *

[229] CLAY JETT, a witness called by the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. LAWSON:

1 Q. Mr. Jett, are any officers of the Local —

THE COURT: Mr. Witness, you are still under oath.

2 Q. Mr. Jett, are any of the officers of the Local paid for their services as officers?

A. Yes. We do get a salary.

3 Q. Was this true in the 1967 through 1970 period?

A. Yes, sir.

4 Q. Is it true today?

A. Yes, sir.

5 Q. What officers are compensated?

A. The president draws $75.00 a month. The finance officer draws $75.00 a month.

6 Q. Okay.

A. The vice-president draws $35.00 a month, and the shop stewards draw $15.00 a month. I am not quite sure of the figures, but that is close.

7 Q. Is that payment made whether or not they attend the Local Union meetings?

Is there any additional payment made for attending the Local Union meetings?

A. There is no additional for attending the Local Union meetings.

8 Q. Am I correct that there is no payment made to the officers, sir, if the treasury of the Union falls below a certain set figure?

A. There is no payment made if the treasury falls below $3000.00.

9 Q. Has this been true since 1967?

A. No. Sir, this was put into effect a year or so ago.

10 Q. So from 1967 through 1970, sir, the payments were just as you have indicated?

A. Not necessarily. Sometimes during this period the payments were cut out, and at one time it was reduced by a certain amount.

11 Q. What caused that?

A. The finances were getting down low.

12 Q. But there is no payment based upon whether one attends a meeting or not?

A. Right.

13 Q. Right.

A. I am sorry. I believe that the shop foreman has to attend three meetings to be paid.

14 Q. They get $10.00 or $15.00 a month?

A. It is either $10.00 or $15.00. Sir, I cannot [230]

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

No. TH 70-C-117

PETER J. BRENNAN, Secretary of Labor,
United States Department of Labor
(Successor to James D. Hodgson, Resigned)
v.
LOCAL 3489, UNITED STEELWORKERS OF AMERICA,
AFL-CIO
AND
UNITED STEELWORKERS OF AMERICA, AFL-CIO

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, Peter J. Brennan, Secretary of Labor, United States Department of Labor (Successor to James D. Hodgson, Resigned), hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order of the District Court dismissing Plaintiff's Complaint, entered in this action on the 30th day of April, 1974.

Respectfully submitted,

STANLEY B. MILLER
United States Attorney

by: WILLIAM F. THOMPSON
Assistant United States Attorney

Attorneys for Plaintiff

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Supreme Court, U. S.
FILED
JAN 19 1976
MICHAEL RODAK, JR., CLERK

No. 75-657

In the Supreme Court of the United States

OCTOBER TERM, 1975

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, PETITIONERS,

v.

JOHN T. DUNLOP, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE SECRETARY OF LABOR

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

WILLIAM J. KILBERG,
Solicitor of Labor,
Department of Labor,
Washington, D.C. 20210.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-657

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, PETITIONERS,

v.

JOHN T. DUNLOP, SECRETARY OF LABOR.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE SECRETARY OF LABOR

The question presented in this case is whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification" on the right of candidacy within the meaning of Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 533, 29 U.S.C. 481(e), when its effect is to disqualify 96.5 percent of the local union membership.

1. This action was brought by the Secretary of Labor under Section 402 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482 ("LMRDA"), to

set aside an election of officers conducted in June 1970 by Local 3489, United Steelworkers of America, at Terre Haute, Indiana. The complaint alleged that the Local had imposed an unreasonable qualification for candidacy for local union offices, in violation of Section 401(e), and had failed to elect its officers by secret ballot, in violation of Section 401(b). The United Steelworkers of America intervened as a party defendant.

The district court dismissed the complaint, finding that no violation of the Act had occurred (Pet. App. 22a). The court of appeals reversed and ruled in the Secretary's favor on both grounds (Pet. App. 15a). Petitioners seek review only of the court of appeals' ruling that the union's meeting attendance rule is unreasonable under Section 401(e).

Most of the facts regarding the rule and its effects in this case were stipulated. Imposed by the international union's constitution, it restricts candidacy for local union office to members in good standing who have attended at least 18 of the 36 regular monthly meetings of the local preceding the triennial election (unless union activities or work hours preclude attendance). At the time of the 1970 elections, Local 3489 had approximately 660 members in good standing, of whom only 23 were able to satisfy this precondition to candidacy. Ten of the 23 were incumbent officers. Only thirteen candidates appeared on the ballot for a total of ten offices. Six of these candidates ran unopposed (Pet. App. 2a-3a).[1]

In *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, this Court invalidated a rule restricting eligibility for major union offices to members

[1]Bernard Frye, an unsuccessful candidate for president, complained of the rule to the union and, having exhausted his union remedies without securing relief, thereupon to the Secretary (Pet. App. 3a-4a).

who had previously held union office. In that case the candidacy limitation rendered 93 percent of the union members ineligible for office, and the Court said that a rule having such an effect "can hardly be a 'reasonable qualification' " under Section 401(e) (391 U.S. at 502). Here the meeting attendance rule disqualified 96.5 percent of the local union's membership from office, and the court of appeals said that it "it cannot be deemed a reasonable qualification either" (Pet. App. 7a).

The court did not, however, rest its judgment on a determination that the meeting attendance rule was *per se* unreasonable. While the court acknowledged that the disqualification of so high a percentage of the union membership might in itself be unreasonable (Pet. App. 8a), it held that the unreasonableness of the meeting attendance rule here was also shown by its tendency to produce other results inimical to the purposes of the LMRDA. Thus, the rule perpetuates "entrenched leadership" by making would-be challengers to union officers plan their campaigns at least 18 months before the next election, even though they might have been content with the incumbent leadership at that time, and by disqualifying prospective candidates who had assiduously attended meetings for as long as 17 months in a row (Pet. App. 9a).

The court discounted petitioners' reliance on an outdated section of the LMRDA Interpretative Manual issued by the Secretary which provided that a two-year, 50 percent meeting attendance requirement would not be deemed unreasonable under Section 401(e).[2] As the court pointed out (Pet. App. 10a), "the three-year rule can be 50 per-

[2]The provision, Section 422.206 of the Manual, had been superseded by 29 C.F.R. 452.38, which provides that in place of "arbitrary guidelines" reasonableness is to be judged "in the light of all the circumstances of the particular case."

cent harsher," and "the reasonableness of the two-year rule does not determine the reasonableness of the three-year rule."

The court of appeals also rejected the argument that the three-year 50 percent meeting attendance rule was reasonable since it was ostensibly designed to insure candidates' interest in and knowledge of union affairs, noting that a similar claim had been made in support of the candidacy qualification invalidated in the *Hotel Employees* case. Nor could the rule be justified as an inducement to attendance at union meetings when it barred 96.5 percent of the members from candidacy for local office yet produced an average meeting attendance of 47 out of 660 members. Finally, the court noted (Pet. App. 11a) that only one other national union had specified a three-year period during which a member must attend meetings to qualify as a candidate for local union office.

2. The instant case is one of numerous actions filed by the Secretary challenging elections held by local unions of the United Steelworkers of America because of the imposition of the three-year 50 percent meeting attendance requirement.[3] The first appellate decision on the merits of the rule was rendered in *Brennan* v. *Local 5724, United Steelworkers of America*, 489 F.2d 884, 889 (C.A. 6),

[3]The first case to reach a court of appeals was *Shultz* v. *Local 6799, United Steelworkers of America*, 426 F.2d 969 (C.A. 9) (affirmed *sub nom. Hodgson* v. *Local 6799, United Steelworkers of America*, 403 U.S. 333), where no decision was reached with respect to the reasonableness of the rule because it had not been the subject of exhaustion of internal union remedies before a complaint was filed with the Secretary. For the same reason, there was no appellate decision on the merits of the issue in *Hodgson* v. *Local 1299, United Steelworkers of America*, 453 F.2d 565 (C.A. 6), or in *Shultz* v. *Local 1150, United Steelworkers of America*, No. 71-1467, decided July, 1971 (C.A. 7) (unreported).

where the court upheld the rule, reasoning that it "disqualifies no one" but leaves it up to the members to "disqualify themselves as a matter of free choice by their unwillingness" to attend a sufficient number of meetings to qualify for candidacy (Pet. App. 33a). The court of appeals in the present case disagreed with that decision (Pet. App. 8a, n. 7), creating a conflict among the circuits.[4]

While we believe that the decision below was correct, we agree with petitioners that the conflict should be resolved and accordingly do not oppose the petition. Meeting attendance qualifications have nationwide impact. The three-year 50 percent qualification at issue here is imposed by the parent union upon each of its 5,200 local unions, affecting some 1,400,000 union members (Pet. 8). Beyond the Steelworkers, the record below shows that eleven other unions comprising nearly 25 percent of the Nation's union membership have mandatory meeting attendance preconditions to candidacy (although only one other than the Steelworkers has a three-year requirement). Many parent unions leave the matter to be determined by local option, with the result that some locals have adopted candidacy requirements as restrictive as those involved here.

The conflict should be resolved not only because of the broad impact of such rules, but also because of the inconsistency between the courts of appeals over the principles to be followed in determining reasonableness under Section 401(e). The Sixth and Seventh Circuits have now taken fundamentally different approaches to that section;

[4]A slightly different meeting attendance rule has been held unreasonable under Section 401(e) in *Brennan* v. *Local Union No. 639, International Brotherhood of Teamsters*, 494 F.2d 1092, 1099-1100 (C.A.D.C.). See also *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n*, 405 F.2d 176 (C.A. 3), striking down a 75 percent, two-year attendance rule.

the issues presented are of national importance in the administration of the Act, and warrant consideration by this Court.[5]

Accordingly, the Secretary does not oppose the petition.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

WILLIAM J. KILBERG,
Solicitor of Labor.

JANUARY 1976.

---

[5]In the government's petition for certiorari in *Hodgson* v. *Local 6799, United Steelworkers of America*, 403 U.S. 333, we urged the Court to grant review not only of the exhaustion-of-remedies issue which ultimately proved dispositive of the case, but also of the reasonableness of the Steelworkers' meeting attendance qualification because of the extent of its impact and the importance of the issue.

Supreme Court, U. S.
FILED
MAY 13 1976
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-657

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioners,

v.

WILLIAM J. USERY, SECRETARY OF LABOR,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-657

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioners,

v.

WILLIAM J. USERY, SECRETARY OF LABOR,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 520 F.2d 516 (7th Cir. 1975) and is reprinted in the Appendix to the Petition for Writ of Certiorari (Pet. App. 1a-15a).[1] The opinion of the district court is unreported and is reprinted in the Appendix to the Petition for Writ of Certiorari (Pet. App. 17a-22a).

[1] The Appendix to the Petition for Writ of Certiorari is referred to herein as "Pet. App." The single appendix is referred to herein as "App." Citation to exhibits attached to the pretrial stipulation but not included in the single Appendix will be in the form "Ex. A. ——."

JURISDICTION

The judgment of the Court of Appeals was entered on August 5, 1975 (Pet. App. 16a). A timely petition for writ of certiorari was thereafter filed on November 3, 1975, and granted on February 23, 1976. The jurisdiction of this Court rests upon 28 U.S.C. §1254 (1).

STATUTE INVOLVED

The statute involved is the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. §401, *et seq.*, in particular, Section 401 of that Act, 29 U.S.C. §481 which, in relevant part, reads as follows:

"Terms of Office; Election Procedures

* * * *

"Sec. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * * *

"(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. . . . The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title."

QUESTION PRESENTED

Whether a union's rule requiring that a candidate for local union office has attended half (½) the regular monthly meetings held in the three years preceding nominations is a "reasonable qualification" for candidacy within the meaning of the Labor Management Reporting and Disclosure Act of 1959, where attendance is not difficult for any member and any member may qualify simply by devoting two hours every other month to union affairs.

STATEMENT OF THE CASE

Introduction

United Steelworkers of America, AFL-CIO ("Steelworkers" or "International Union") is an international labor organization with 1,400,000 members. The Steelworkers has approximately 5,200 chartered local unions, one of which is Local 3489.[2] The membership of Local 3489 is composed entirely of production and maintenance employees of the Stran Steel Corporation plant in Terre Haute, Indiana (Pet. App. 2a; App. 8). At the time of the election which is the subject of this lawsuit, there were 660 members in good standing in the Local (*id.*).

The governing body of the Steelworkers is the International Convention, which meets every two years. It is comprised of delegates elected by the constituent local unions in the Steelworkers. The Convention adopts the International Constitution, which governs the affairs of the union between conventions (App. 8). Among the matters

[2] At the time of the election herein, there were approximately 1,250,000 members and about 3,700 affiliated local unions chartered by the International Union (App. 9-10). The increase both in members and in the number of chartered locals has resulted largely from the affiliation of the International Union of Allied and Technical Workers of the United States and Canada, District 50.

regulated in the Constitution is the election of union officers.[3]

Until 1962, the Constitution provided that the term of office in each Steelworker local would be two years. It also provided that, to be eligible for local union office, a member must have attended at least one-half of the regular membership meetings conducted by his local during the preceding term of office, i.e., during the preceding twenty-four months. At the 1962 Convention, the Constitution was amended to provide that the term of local union office would be three years, rather than two.[4] No change was made in the meeting attendance requirement (App.

At the 1964 Convention, rank-and-file delegates, on their own initiative, proposed that the Constitution be amended to expand the meeting attendance requirement to thirty-six months, so that it would be coterminous with

[3] The relevant provision of the Steelworkers' Constitution (Ex. A, 44-45) reads as follows:

[Article VII]

• • •

"Sec. 9. No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless

(a) He shall have been in continuous good standing for a period of twenty-four (24) months immediately preceding the election, or if his Local Union has been in existence for a lesser period prior to the election, he must have been in continuous good standing from the time that he joined such Local Union; and

(b) He is employed in a plant or mill or other place within the jurisdiction of the Local Union; and

(c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1970, election, unless his Union activities or working hours prevented his attendance."

[4] This was consistent with Section 401 (b) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §482 (b), which requires that locals elect officers "not less than once every three years."

the new three-year term of office. The change, though not sponsored or sought by the Union's hierarchy, found favor with the delegates and a majority voted to adopt the proposed amendment (App. 27-28).[5]

The Secretary of Labor was less enthusiastic than the Steelworkers' membership about the new meeting attendance rule. Beginning with the 1967 local union elections, the first to be conducted under the new rule, and continuing to date, the Secretary has engaged in an ongoing challenge to the validity of the rule under the Labor Management Reporting and Disclosure Act of 1959 (hereinafter "LMRDA" or the "Act"). This attack has persisted in the face of one decision after another in which those courts which actually reached the merits were unanimous in declaring the Steelworkers' meeting attendance rule to be a reasonable qualification under the Act. *Brennan* v. *Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973); *Shultz* v. *Local Union 6799,* 71 LRRM 2820 (C.D. Cal. 1969), *aff'd on other grounds,* 426 F.2d 969 (9th Cir. 1970), *aff'd sub nom., Hodgson* v. *Local 6799, United Steelworkers of America,* 403 U.S. 333 (1971); *Shultz* v. *Local 1299, United Steelworkers of America,* 324 F. Supp. 750 (E.D. Mich. 1970), *aff'd in part, sub nom., Hodgson* v. *Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971); *Shultz* v. *Local 1150, United Steelworkers of America,* 75 LRRM 2869 (S.D. Ind. 1970), *vacated on other grounds* (No. 71-1467, 7th Cir. July 1971, unreported).[6]

[5] In 1974, the delegates to the Convention voted down a proposed change in the meeting attendance rule which would have reduced the attendance requirement from one-half to one-third. Officials of the Department of Labor attended as observers. *Proceedings Of The Seventeenth Constitutional Convention Of The United Steelworkers of America* at 232-238, 252-253.

[6] Compare, *Brennan* v. *Local 3911, United Steelworkers of America,* 372 F. Supp. 961 (N.D. Ill. 1973) where a district court in dictum opined that the rule was not a reasonable qualification.

The Court of Appeals in the instant case has departed from this line of authority, creating, in the process, a square conflict between its decision and that of the Sixth Circuit in *Brennan* v. *Local 5724, supra,* which upheld the meeting attendance rule. The Secretary and the Union have joined in asking this Court to resolve the conflict.

Actually, the candidate qualification issue here involved is one on which this Court previously granted certiorari in *Hodgson* v. *Local 6799, supra.* There, it will be recalled, the Secretary seized upon a member's complaint about other aspects of the local union election as the vehicle for launching an attack on the meeting attendance rule. The Secretary's one-time practice was to challenge union election procedures which he didn't like even though the union's members were content with the procedures, and no member had complained about them.[7] This Court held that the exhaustion requirements contained in Section 402 (a) of the Act barred the Secretary from litigating the meeting attendance rule in the absence of an internal union protest on that subject. Having so ruled, the Court did not reach the question of the reasonableness of the rule itself. 403 U.S. at 341.

The Election At Local 3489

The cases cited above all grew out of the 1967 local union elections. The present case arises out of the June 22, 1970 election of officers at Local 3489.[8] In accordance with standard Steelworker procedure, a nomination meeting was conducted at which any member could be nominated for local union office (Ex. B, 18-19). All told, there were fifty-

[7] See cases discussed in *Hodgson* v. *Local 1299, supra,* 453 F.2d at 568, n. 3.

[8] Another pending case is *Brennan* v. *Local 5702, United Steelworkers of America,* Civ. Act. No. 73-3272 (E.D. La.) where both parties have filed motions for summary judgment. The 1976 round of Steelworker elections is now in progress at 5,200 local unions.

three nominations for office and grievance committee positions but nineteen persons declined thirty nominations (App. 11-13). This left twenty-three candidates who were nominated and wished to run (App. 13-14, 23).[9]

At the nomination meeting, an Election Committee was elected (App. 13-14). One of the Committee's duties was to determine whether those nominated and desirous of running satisfied the Steelworkers' meeting attendance rule and other eligibility requirements (Ex. B, 26-27). Only two candidates were declared ineligible because they had not attended a sufficient number of union meetings. One, David L. Jones, had attended three meetings while the other, B. Brackall, had attended sixteen meetings (App. 14).[10] No claim is made that either was, in fact, eligible under the rule.

No one knows how many members were eligible to hold office in Local 3489. All one can say with certainty is that there were *at least* twenty-three members in the Local who were eligible. Twenty-two were eligible by virtue of meeting attendance alone (App. 11, 23), and one, Wayne Larue, was eligible, according to a Department of Labor investigator, by combining the meetings he actually attended with credits for nine meetings which fell during his working hours (App. 81-86). There may have been

[9] Five candidates ran both for office and grievance committee (D. Jones, Bernard Frye, Fred Blade, Mike Mahoney, and Russell Forsythe) (App. 11-12, 23).

[10] The Stipulation lists Brackall as an incumbent officer in the Local (Trustee) eligible for union office (App. 11). But elsewhere in the Stipulation, he is not listed among the six nominees who were incumbents (App. 13) and he is identified as one of the two members declared ineligible (App. 14). He could not have been both an incumbent and a non-incumbent and both eligible and ineligible. Manifestly, the parties erred by listing him as an eligible incumbent. Accordingly, of the twenty-two members who were eligible in 1967 by virtue of meeting attendance alone, nine (rather than ten) were incumbent officers.

others eligible by virtue of combined work credits and meetings.[11] The Local had no occasion to determine the eligibility status of employees who were never nominated or who were nominated but declined (App. 13).

The principal contest in the 1970 election was for the office of President, by far the most vital office in small locals such as this one. Three candidates competed in this campaign (App. 16). In the other contest, four candidates ran for three trustee offices (*id.*). In the six remaining offices, the nominated candidates were unopposed (*id.*). As for carryover officers, it turns out that six won election either to the same or some other office while non-incumbents were elected to the important offices of Vice President, Recording Secretary and Treasurer and to one minor office, Guide (App. 14, 16).

No evidence was offered tending to show that the leaders of Local 3489 had become entrenched or insulated from challenge. On the contrary, several witnesses, complainant Frye among them, testified to the large turnover in officers in the Local (App. 69, trial transcript at 171), specifically, five Presidents in ten years (App. 98) and an estimated forty changes in officers over four elections (App. 99).

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[11] During the relevant period, the workday was divided into three shifts with employees generally working the same shift without rotating (App. 10). If, as the Secretary's witness testified, Mr. Larue earned nine credits by reason of a conflict between his working hours and meetings, then other employees—an undetermined number on the same shift—were also entitled to additional credits, perhaps as many as nine. The witness checked the work records for members who had attended fifteen or more meetings (the furnished list) but evidently did not conduct such a check for members who attended between nine and fourteen meetings (App. 83-86). Yet without explicit evidence negating the possibility, it seems likely that some members in the nine to fourteen meeting category who worked the same shift as Larue were eligible, just as he was, through a combination of meetings attended plus work credits.

Proceedings In The District Court

Following the election, and after exhausing internal union remedies, Bernard Frye, one of the two defeated candidates for president of the Local, though himself eligible, filed a complaint with the Secretary of Labor asserting, *inter alia,* that the meeting attendance rule was unreasonable (App. 16-17).[12] Thereafter and within the time permitted by the statute, the Secretary instituted this action against Local Union 3489 under Title IV of the LMRDA seeking to set aside the June 22, 1970 election. The complaint alleged that the election was void because the Local had applied the meeting attendance rule and because of a "secret ballot" allegation not in issue here (App. 2-4). The Steelworkers, as parent international union, intervened as a party defendant (App. 1, 5-6).

The facts relating to the meeting attendance issue were largely stipulated or are otherwise uncontroverted. In the three years preceding the June 22, 1970 election, the Local held one meeting each month, lasting, on the average, approximately one hour and forty-five minutes (App. 10, 78). Attendance averaged forty-seven in this span (App. 11). For much of the three-year period, the meeting was split into two parts, both regularly scheduled.[13] After March of 1970, a single meeting was held on the third Sunday of every month (*id.*). All meetings were conducted in the Union hall which is located within three miles and a ten minute automobile ride from the Stran Steel plant (App. 10).

---

[12] In 1973, the complainant won the presidency of Local 3489 in an election conducted under the Steelworkers' meeting attendance rule (Pet. App. 3a-4a, 18a). As an incumbent, he was later defeated in April of 1976 by a member who attended more than enough meetings to satisfy the rule.

[13] One session met at 4:30 pm on the second Wednesday of every month. The other met at 1:30 pm on the following day (App. 10-11).

The monthly meeting is the place where the official business of the local is transacted, and where the decisions are made (by vote of those attending) on all important union matters. Under the constitutionally prescribed agenda format, the Recording Secretary reads all communications received by the local during the preceding month (Ex. A, 81); the Treasurer and Financial Secretary report on all financial affairs, and each proposed disbursement is voted upon by the members present (Ex. A, 81-82, 84-85); a staff representative employed by the International Union reports on any and all current matters of interest at the International level, including the status of relevant collective bargaining negotiations and pending arbitration matters (Ex. A, 83); the chairman of the local's Grievance Committee reports on the status of all pending grievances arising under the collective bargaining agreement (Ex. A, 83); reports of the other standing committees (Civil Rights, Workmen's Compensation, Welfare, Safety, Finance, etc.) are presented, debated and resolved (*id.*); and in the "unfinished business" and "new business" sections of the meeting all other matters of importance to the union are debated and resolved by membership vote (Ex. A, 83-84).[14]

The parties agreed as follows with respect to the purposes of the Union's meeting attendance rule (App. 21):

> "38. It is the position of the defendant International that the meeting attendance requirement as set forth in the International Constitution, By-Laws for Local Unions and the Local Union Election Manual should be retained because it serves a three-fold purpose:

[14] The meeting's role as a "school" for future local officers is described in more detail in the testimony of a union staff representative in another meeting attendance case to which the Secretary and the Steelworkers were parties. *Schultz* v. *Local 1299, United Steelworkers of America, supra.* For this Court's convenience, we have reproduced the relevant portions of that testimony as Appendix A to this brief. In particular, see Appendix A at 11-22 (hereinafter cited as "Br. App. A, ——").

> "(a) to encourage broad base participation in the affairs of the union, and to obtain as large a turnout as possible at the meetings at which the union's business is conducted;
>
> "(b) to attempt to assure that candidates have demonstrated an interest in and are likely to be concerned with the problems of the union; and
>
> "(c) to attempt to insure that candidates have participated in the affairs of the union and are, therefore, sufficiently familiar with its problems to be able more intelligently to fulfill the numerous responsibilities and duties attendant to holding office.
>
> "This position was made known to representatives of the Secretary of Labor by representatives of defendant International prior to the initiation of this suit."

The parties also stipulated as to the Secretary of Labor's prior interpretations of the "reasonable qualifications" provision of Section 401 (e). The Secretary publishes an Interpretative Manual setting forth his viewpoint as to the proper interpretation of the statute, to assist unions in complying with the LMRDA. At the time of the election challenged herein, paragraph 422.250 of the Manual (App. 55), captioned "Participation in Union Affairs," stated a general principle that, absent unusual circumstances, an eligibility rule designed to assure participation in and familiarity with union affairs is a reasonable candidacy qualification:

> "Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications, they are not to be considered unreasonable in themselves."

As one specific application of this general principle, the Manual declared that a requirement of fifty percent meeting attendance over a twenty-four month period is a reasonable candidacy qualification, except where attending presents "an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction." Manual Par. 422.206 (App. 54). The Interpretative Manual in upholding fifty percent meeting attendance rules, did not state an exception for cases where only a small percentage attend (App. 54). Some time in the mid-1960's, the Secretary instituted a lawsuit against a local of the Brotherhood of Railway Carmen on the theory that an otherwise reasonable rule *was* invalidated because only a small percentage qualified under the rule. That lawsuit was withdrawn, however. In explaining the withdrawal, the Department of Labor stated that the Secretary had conducted "a general review of attendance requirements" and had concluded that a rule should *not* be invalidated simply because a small percentage actually qualify (App. 51, 53):

> "The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. . . .
>
> "Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.*" (Emphasis added.)

Thus, the Secretary's prior view was that a small eligibility percentage does not invalidate a meeting attendance rule.

Finally, the parties stipulated to the receipt of "expert" testimony which the Secretary's Director of Research had given in another meeting attendance case involving the Secretary and the Steelworkers (App. 21, 30-45). Included was a chart which the expert had prepared (App. 21-22, 45-48).

In the opinion of the Secretary's Director of Research, meeting attendance requirements do not increase attendance, and there are other ways in which members can become familiar with the responsibilities of union office. He acknowledged, however, that in expressing these opinions, "I disagree with the Secretary" (App. 42-43) who, as noted above, had declared that meeting attendance rules serve legitimate union interests. The expert further acknowledged, in response to questioning by the judge, that while he does "not personally care for" meeting attendance rules, they are "a reasonable way" to assure that candidates are familiar with the responsibilities of union office, provided they are "not too restrictive" (App. 40, 44).

The chart shows that the constitutions of international unions having twenty-five percent of all of America's union members impose meeting attendance requirements as a

candidacy qualification for local union office (App. 32, 45-48.) Another seven percent of America's union members are in international unions whose constitutions expressly leave the use of a meeting attendance requirement to local union option (App. 32, 45-48). The remainder of the international union constitutions are silent on this subject, but the expert testified that within these international unions there are locals whose *own* bylaws impose meeting attendance requirements (App. 34).

Opinion Of The District Court

The district court upheld the Steelworkers' meeting attendance rule. In doing so, it agreed with a hitherto unbroken chain of authorities, all declaring the Steelworkers' meeting attendance rule a reasonable requirement under §401(e) of the LMRDA. The district court readily distinguished *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492 (1968). That case involved a rule which prohibited members from holding local union office unless they had previously held union elective office. The Steelworkers' meeting attendance rule stood on an altogether different footing, said the district court. Under the prior office holding restriction in *Hotel Employees,* the employee had no control over his eligibility. Instead, eligibility depended on how the entrenched leaders chose to use their appointive powers. In marked contrast, the Steelworkers' meeting attendance rule disqualified no one. The rule, said the court, leaves each member free to qualify himself for union office by giving less than two hours of his time every other month, on the average, to union activity. The district court flatly rejected the notion that the reasonableness of a candidacy requirement could be determined on the basis of eligibility percentages where compliance with the requirement rests not with entrenched leaders, but in the hands of the member himself. Finally, the court found, the rule was designed to insure that candidates had demonstrated an interest in union affairs prior to election and would, if elected, be able more knowledgeably to fulfill their duties (Pet. App. 19a-21a).[15]

Opinion Of The Court Of Appeals

On appeal, the Seventh Circuit reversed, holding that the meeting attendance rule was not a reasonable qualification. The Court of Appeals read *Hotel Employees* to mean that if the results of a rule were such that a high percentage of employees was not eligible (ninety-three percent in *Hotel Employees* and ninety-six and one half percent here, by the court's reckoning),[16] that fact alone proved that the rule could not be a reasonable candidacy requirement (Pet. App. 7a-8a). Moreover, on the basis that LMRDA was aimed at the abuses of entrenched leadership, the court saw the rule as a device to keep incumbent leaders in office. This was so, it said, because insurgents would have to plan eighteen months in advance in order to acquire sufficient attendance credits to challenge incumbent office holders. Moreover, the court surmised, some members might have been content with the leadership and therefore stayed away from meetings until it became too late to qualify (Pet. App. 9a).

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[15] As to the balloting allegation, the district court found no violation because every member of the Local had ample opportunity to mark his ballot in secret and there was no evidence showing that the lack of a voting booth may have affected the outcome of the election (Pet. App. 21a-22a). The Seventh Circuit reversed, however. In its view, it was not enough that the Union provided an opportunity for each voter to mark his ballot in secrecy. Instead, the court held, the Act demands that the Union "assure" the sanctity of the ballot (Pet. App. 14a). In any event, balloting is no longer an issue in this case.

[16] The 96.5 percent figure represents the court's finding of twenty-three eligible members out of a total of 660. For reasons explained herein at pages 7-8, it appears that more than twenty-three members were eligible.

Steelworker reliance on the Secretary's Manual was misplaced, the court stated, first, because the Secretary had revised the Manual in 1973, three years after the election at issue, and second, because the reasonableness of a two-year fifty percent meeting attendance rule did not, in its view, determine the reasonableness of a three-year rule. It characterized the latter as possibly harsher by half with respect to the number of meetings required and the time limitation in making a decision to run (Pet. App. 10a).

The Seventh Circuit expressly accepted *all* the district court's findings of fact (Pet. App. 15a). When it came to the purpose of the meeting attendance rule, however, it treated the district court's findings with respect thereto as arguments rather than as findings of fact. These findings were rejected on the ground that similar "arguments" had been rejected in *Hotel Employees* (Pet. App. 11a). The court of appeals also discounted the rule's objectives because it thought that one of them—"larger turnouts" at meetings—had not been achieved and that another—competent union leadership—could be met by unspecified means other than the rule (*id.*). In reaching its decision, the court declined to follow the Sixth Circuit's decision in *Brennan* v. *Local 5724, United Steelworkers of America, supra,* 489 F.2d 884 (Pet. App. 8a).

ARGUMENT

THE MEETING ATTENDANCE RULE IS REASONABLE

Introduction and Summary

As noted, Section 401(e) of the LMRDA, 29 U.S.C. §481(e), provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to . . . reasonable qualifications uniformly imposed)."

At issue in this case is the Secretary's contention that the Steelworkers' meeting attendance requirement as applied to the June 1970 election at Local 3489 was unreasonable. There is no contention that the rule was not uniformly imposed (Pet. App. 5a).

At the Secretary's urging, and contrary to the teachings of every other court which has ruled on the matter, the court below placed an interpretation on Section 401(e) under which the effect or impact of the attendance rule on the membership of each local union is the main determinant in deciding whether the rule passes the "reasonable" test. If a high percentage is disqualified, says the Seventh Circuit, that fact *alone* shows that the rule is unreasonable (App. 7a, 8a). In espousing this theory, the court suggests that it is mandated by the decision in *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492 (1968).

As we have indicated, other courts do not subscribe to this legal analysis. Chief among them is the Sixth Circuit which has declared that the effect of the Steelworkers' meeting attendance rule is *not* the touchstone for determining its reasonableness. *Brennan* v. *Local 5724, United Steelworkers of America,* 489 F.2d 884, 888 (6th Cir 1973). In that court's view, it is incorrect to read *Hotel Employees* as commanding invalidation of a candidacy requirement which every member could easily have met merely because a large number of members were unwilling to meet it.

We believe the Sixth Circuit's analysis is the correct one and that the rule applied in the instant case is a reasonable candidacy requirement. To further support our claim, we show herein that:

A. The rule is designed to accomplish legitimate union objectives—objectives which the Secretary of Labor repeatedly has sanctioned as the valid foundation for eligibility requirements;

B. The purpose of Title IV of the LMRDA was to eradicate an evil which Congress found intolerable—that incumbents were able to keep themselves entrenched through a series of undemocratic devices, including eligibility requirements which disqualified all or virtually all potential opponents—and the meeting attendance rule in this case does not fit the category of evil against which Congress legislated; and

C. The arguments adopted by the court below for striking down this rule—particularly the reliance on the small percentage of members who actually qualified—do not warrant invalidating the rule.

First, however, we take a closer look at the rule itself and the nature of the "burden" placed on members who wished to qualify. Under the Steelworkers' Constitution, local union officers and grievance committeemen are elected for three year terms of office. The meeting attendance rule is one of several Constitutional pre-requisites for eligibility to hold local union office. It provides that to be eligible a member must have attended one-half of the regular monthly meetings during the thirty-six months preceding the election, unless union activities or working hours prevented his attendance. This requirement is made applicable by the Constitution to all 5,200 Steelworker locals.

The uncontroverted facts in this case show that all any member had to do to satisfy the rule was to devote approximately one hour and forty-five minutes to union affairs every other month, on the average, during the three-year period between elections. Reduced to simple mathematical terms, the rule thus imposed on members the obligation to spend approximately thirty-two hours at union meetings every three years. The meetings were regularly scheduled in a set pattern and, to accommodate all the members, were conducted in split sessions or, at term end, on a Sunday. Finally, the Union hall was conveniently

situated within a few miles and a ten minute automobile ride from the plant. In these circumstances, attendance clearly was not difficult for any member, and the requirement imposed no onerous logistical burden on any segment of the membership.

A. The Steelworkers' Meeting Attendance Rule Is Designed To Accomplish Legitimate Union Purposes.

Prior to the institution of this action, the International Union explained to representatives of the Secretary of Labor the three reasons why it desired retention of the meeting attendance rule.

(1) *Encourage Opposition*

The Steelworkers has an institutional interest in encouraging broad-based participation in the affairs of the union and to obtain as large a turnout as possible at the meetings. The local meeting is the place where the official business of the local is conducted, where its policies are determined and where decisions are made on how its treasury is to be spent. That being so, the International Union considers it essential that sufficient members attend to prevent the incumbent local union officers from making these decisions without effective membership control. Since there is general apathy among workingmen about attending union meetings (App. 41-42), some encouragement is essential to secure membership attendance. The eligibility requirement is uniquely well suited to that purpose, for it compels those who are dissatisfied with their incumbent leadership (and who wish to challenge that leadership at the next election) to attend the meetings.

The rule had its intended effect at Local 3489. Average attendance at meetings was forty-seven. Since there are only ten officers, this means that on the average, nearly thirty-seven non-officers attended each month. The officers

were thus denied any opportunity to exercise dictatorial control.

On precisely the same record as that made in the present case, the district court in *Shultz* v. *Local 1299, supra,* found that "the purpose of the meeting attendance rule was and is to accomplish legitimate union goals, namely, to provide a constant check upon the growth of unbridled control of the local's affairs by incumbent officers. . . ." 73 LRRM at 2677.[17] This finding was echoed by the district court in *Brennan* v. *Local 5724, United Steelworkers of America, supra,*[18] and later endorsed in that case by the Sixth Circuit. "[T]he Steelworkers' rule fosters the objec-

[17] See also *Shultz* v. *Local 1150, United Steelworkers of America,* 75 LRRM 2869, 2872 (S.D. Ind. 1970), *vacated on other grounds,* (No. 71-1467, 7th Cir., July 1, 1971, unreported) where the court found that one of the three purposes served by the Steelworkers' meeting attendance rule was to encourage broad participation in the union's affairs and to obtain as large a turnout as possible at the meetings.

[18] This purpose for the rule was explained by the General Counsel of the Steelworkers and seconded by the Assistant to the President of the Union testifying in *Local 5724,* a case in which the Secretary and the Steelworkers were parties.

> "The attendance at local unions is quite variable; however, we think it is valuable even at those local unions where it [the rule] has not given rise to the kind of attendance that one would like to see because at least it insures that those who have problems, those *who are* in *opposition to the local union leadership, will come* in order *to keep ripe their right to run against the local union leadership.*
>
> "We think this is important too in order that the local union leadership is *not permitted to function* as *sort of a one-party system unaccountable to anyone.* We think it is important that those people get there. We certainly know that it has had that effect, even where it hasn't had the effect of creating a great deal of attendance." (Emphasis added.)

For this Court's convenience, we have reproduced the relevant portions of the testimony in that case as Appendix B to this brief. The passage quoted above appears at Appendix B at 37, hereafter cited as "Br. App. B. ——."

tives of the Act . . . by requiring dissidents to attend local union meetings it assures that incumbents cannot administer the union's affairs in an uncontrolled, arbitrary manner." 489 F.2d at 889, n. 4.

The Secretary of Labor, in a series of opinion letters, has himself affirmed that meeting attendance requirements are "a reasonable means of encouraging participation in the affairs of the union." (App. 50-55.)

Notwithstanding this body of factual and analytical materials, the court below misconceived the purposes underlying the rule. Thus, the Union did not assert that the rule fosters "large turnouts" at union meetings (Pet. App. 11a). What we said is that it encourages as large a turnout as possible. Certainly attendance is higher than what it would be without the rule. But even more important than the number of members is the identity of the members encouraged to attend meetings. This the court of appeals completely overlooked. The Steelworkers' rule insures that those who are in opposition to the leadership will come to union meetings in order to keep ripe their right to run for local union office. As such, the rule actually furthers the objectives of the Act. The validity of this purpose cannot be judged, therefore, on the basis of some undefined standard for a "high turnout" at which the number of members attending becomes sufficient to satisfy a court, *ex post facto,* of the rule's worthiness.

(2) *Demonstrated Interest*

The Steelworkers also has an institutional desire to assure that those who seek office in its locals have demonstrated at least minimal interest in the welfare of the Union and its members. As found by the district court in the instant case, the meeting attendance qualification is thus designed to "insure that candidates have demonstrated an interest in union affairs prior to the election and are there-

fore likely to continue to do so, if elected." (Pet. App. 20a-21a, App. 21.) Once again, other courts passing upon the Steelworkers' rule have joined in finding this to be one of its purposes.[19] Moreover, the validity of the purpose was recognized in *Goldberg* v. *Amarillo General Drivers*, 214 F. Supp. 74, 79 (N.D. Tex., 1963):

> "It is true enough that a union organization has the right to exercise proper discipline of members and prescribe conditions which may be tests of good faith or designed for tokens of interest in the welfare of the union, such as an extended period of membership, *or regular attendance at meetings* . . ." (Emphasis added.)

Likewise, the Secretary of Labor has himself attested that unions have a "legitimate interest" in "obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization." (App. 51-53.)

The court of appeals below did not disturb the district court's finding that "demonstrated interest" is one purpose for the rule. Indeed, with the strictures of Rule 52(a) of the Federal Rules of Civil Procedure firmly in view, it expressly refused to reverse *any* fact findings made by the trial court (Pet. App. 15a).[20]

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[19] *Brennan* v. *Local 5724, United Steelworkers of America, supra*, 489 F.2d at 889. "We believe that the Steelworkers' rule has a direct, substantial relationship to fitness to hold office in that participation in union meetings is one indicia of interest in union affairs."

[20] We believe the court of appeals was incorrect when it treated this finding as to purpose as though it were identical to the "impressive achievement" argument made by the union in *Hotel Employees*. It is one thing to assert, as the union did there, that a rule which necessarily entrenched incumbent leaders and made opposition impossible is nevertheless reasonable merely because those leaders have acted benevolently. It is quite another for a court, in determining the reasonableness of a rule which does not, by itself, prevent contests for office or perpetuate union leadership, to examine the purposes which the rule is intended to serve.

(3) *Informed Leaders*

Finally, the Steelworkers has an institutional interest in insuring that those who obtain local union office have a working knowledge of the union's affairs and are familiar with its problems so that they can more intelligently fulfill the numerous responsibilities and duties attendant to holding office (App. 21). The district court herein found that the meeting attendance rule does serve this purpose (Pet. App. 20a-21a). The same finding was made in *Brennan* v. *Local 5724, supra*, by the district court and the Sixth Circuit. Indeed, *every* district court which heard this issue has found as a fact that one purpose of the Steelworkers' rule is to attempt to insure that candidates have participated in the affairs of the union and are, therefore, better equipped to perform the myriad and complex responsibilities of holding local union office.[21]

The Steelworkers' Constitution sets forth the internal administrative functions to be performed by local union officers (Ex. A. 46-52). In addition, the officers are charged with the responsibility of administering and implementing collective bargaining contracts and increasingly more complicated separate benefit agreements (insurance, pension and supplemental unemployment benefit plans, for example). Many of the officers have, of course, participated in the negotiation of these agreements. It would be tragic for the union's members if the economic benefits and employee protections won through hard bargaining—including, on occasion, sacrifices entailed by long strikes—were eroded through poor administration by uninformed local union officers. Moreover, given the large number of multi-plant,

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[21] *Shultz* v. *Local 1299, United Steelworkers of America, supra*, 324 F. Supp. at 756; *Shultz* v. *Local 1150, United Steelworkers of America, supra*, 75 LRRM at 2872; *Shultz* v. *Local Union 6799, supra*, 71 LRRM at 2823. The evidentiary basis for the finding in these cases consists of facts stipulated to in the present case (App. 21).

indeed industry-wide agreements entered into by the Steelworkers, such losses may well have an impact beyond the particular local simply because agreed-upon contract interpretations take on precedential significance in such bargaining structures.

In recent years, a growing number of federal laws regulating or otherwise affecting union conduct have continuously added to the complexities of holding union office. Titles II and V of the LMRDA, 29 U.S.C. §§431-432 and 501-504, are just the beginning. The passage of the Civil Rights Act of 1964, Title VII, 42 U.S.C. §2000(e), *et seq.* has imposed on local union officers the legal obligation to understand and deal with the interrelationship between employment discrimination and existing seniority systems. The burden is a heavy one, for a "wrong" decision in this area by the officers, even if made in good faith, may be disastrous in its consequences. *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975).

Similarly, the judicially created federal duty of fair representation has made it imperative that local union officers meet specified standards concerning the manner in which they handle and process employee grievances under the grievance-arbitration provision of the contract. *Vaca* v. *Sipes*, 386 U.S. 171 (1967).[22] One other example with enormous impact on collective bargaining for a number of years was the President's economic wage stabilization program which placed an added dimension on the responsibilities faced by local union officers.

Along with creating new responsibilities, recent legislation has also provided local officers with new sets of tools for use in improving the lot of the union's members. The

[22] Of course, compliance with this duty is but one obligation of many which stem from the Labor-Management Relations Act of 1947, 29 U.S.C. §151 *et seq.* See, in particular, Section 8 (b) of that Act, 29 U.S.C. §158 (b).

Occupational Safety and Health Act of 1970, 29 U.S.C. §651, *et seq.* is one and the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.* is another. But these tools—and they are complicated ones—will be of small benefit to the members unless local union officers are sufficiently well informed to initiate and carry forward the appropriate procedures.

There are other reasons inherent in the Steelworkers' structure and philosophy which explain why it is vitally important to the International Union that it strive to obtain qualified local union officers. A cursory glance at the Constitution shows that the Steelworkers is a highly centralized international union. The International Constitution prescribes the rules governing the term, qualifications, and duties of all local union officers, and the conduct of virtually all local union activities, including meetings, discipline, membership, etc. (Ex. A, 41-68, 79-86). Dues and initiation fees are set by the International Constitution and are remitted by employer check-off (or by the local directly) to the Secretary-Treasurer of the International Union (Ex. A, 68-70, 76).

Perhaps more importantly the International Union—rather than the local union—is the exclusive bargaining agent for all the employees represented by Steelworkers. The International Union is also the named party to collective bargaining agreements, and no strike can be called without the approval of the Steelworkers' president (Ex. A, 76-77). In turn, this means that where a "no strike" provision is contained in the contract, as is typically the case, the International is a party to that provision with all that status implies including lawsuits and legal sanctions in the event local union members breach such a provision. Since this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks, Local 770*, 398 U.S. 235 (1970), injunctions—hence possible contempt sanctions—face unions which persist in violating

their contractual obligations. Not surprisingly, therefore, the Steelworkers Union is dedicated to responsible unionism—to the principle that contractual commitments, including "no strike" pledges must be met.[23]

The combined effect of all these factors surely justifies the Steelworkers' quest for qualified, knowledgeable and responsible local union leaders.

The local union meeting is the most practical educational training ground for achieving this objective.[24] Attendance at meetings is a simple and effective way to assure that members acquire the knowledge necessary for performing the functions of office. The local union meeting is where the local's business is discussed, debated and transacted. The agenda format required by the International Constitution virtually assures this result.[25] Thus, in the typical meeting the staff representative reports on any and all current matters of interest at the International level. He also serves as a channel of communication from the rank and file members, relaying their views and opinions back to the International officers (Br. App. B 30). Meeting reports from local union committees inform the membership of every phase of local union activity, including con-

[23] See the testimony of John Rooney, Assistant (for fifteen years) to Steelworkers President I. W. Abel in *Brennan* v. *Local 5724, United Steelworkers of America, supra* (Br. App. B 55-57).

[24] Mr. Rooney expressed this same sentiment as follows:

> "We [the Steelworkers] believe that this can best be done if you have responsible local union officers, and we think that local union officers become responsible only through education, and by education I mean through knowing the problems of the union, the local union, attending its meetings, and gradually becoming committed to the idea also that they must be responsible." (Br. App. B 57).

[25] In *Wirtz* v. *Hotel, Motel & Club Employees, Local 6, supra,* 391 U.S. at 505, this Court appears to have viewed with approval a rule requiring attendance at classes in union management as a prerequisite to candidacy. Manifestly, as shown herein, the regular membership meetings are *this* Union's classes in union management.

tract interpretation, arbitration, policy, politics and community affairs. Finally, the local union meeting is the *only* place where members can obtain the necessary overview of all the problems and collective bargaining challenges before the local union.

The Secretary of Labor has also recognized that a direct correlation exists between meeting attendance and the acquisition of knowledge concerning the functions and duties of local union office. The Secretary, who is vested with the major responsibility for enforcing the election provisions of the Act, has published an Interpretive Manual which expressed his opinions concerning the proper interpretation of each section of the statute and serves both as an instructional guide to local unions and as a binding policy on the Secretary's regional officers throughout the country.

At the time of the election herein, paragraph 422.250 of the Manual (App. 55) stated the general principle that qualifications designed to assure that candidates have participated in the affairs of the union would not be considered unreasonable under ordinary circumstances if uniformly imposed.[26] More to the point, the Manual then went on to elaborate certain specific applications of this general principle: Section 422.206 of the Manual (App. 54) declared that "[a] provision requiring a member to have attended at

[26] The court of appeals seized upon the high percentage of members disqualified as constituting a "special circumstance" which cast doubt on the validity of the rule (Pet. App. 10a). But this clearly was *not* the kind of invalidating special circumstance which the Secretary had in mind. In paragraph 422.206 of the same Manual, the unusual circumstance cited was the situation where attendance presented difficulty for many members, e.g., where the local had an extensive geographical jurisdiction (App. 54). Moreover, in a series of letters the Secretary declared that it would be "less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office.)" (App. 50-53.)

least one-half of the regular meetings of his local union for twenty-four months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members."

In sum, the Secretary has acknowledged that meeting attendance rules can serve precisely the legitimate purposes which the district court here and the courts in other cases have found the Steelworkers' rule is designed to serve. That purpose is, as we have seen, directly related to the candidates' ability to hold office and serve the membership.

B. The Landrum-Griffin Act Was Not Enacted To Strike Down The Steelworkers' Meeting Attendance Rule.

The LMRDA, more popularly known as the "Landrum-Griffin Act," was enacted in 1959 to eradicate certain intolerable evils which had been disclosed in the McClellan Committee hearings relating to the management of a few unions. Congress made clear its view that "the overwhelming majority" of unions are "honestly and democratically run," and emphasized that the Act was being passed to cure evils found in a handful of unions which had abused their public trust. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess. (1959), page 5.

The most publicized of these evils related to racketeering and gangsterism, and much of the Act is devoted to eliminating these blights. Congress also found, however, that a few unions had so structured their election machinery that it was impossible to remove entrenched incumbents. To cure this problem, Congress enacted Title IV, the "Elections" section of the Act.

Title IV does not purport to regulate every detail of union elections. Indeed, Congress made clear that it did *not* wish to impose any inflexible rules which would hinder diversity in the administration of democratic election pro-

cedures; rather, its object was to enunciate certain broad principles of fairness, within which unions could mold specific procedures designed to accommodate their particular needs and circumstances. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess. (1959), 5-7; *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463, 471 (1968). Congress did not intend to "dictate to the Unions what their constitution and bylaws procedure shall be in conducting their elections" or to "impos[e] upon Unions [its] notions of what an election straitjacket should be," 105 Cong. Rec. 6741 (April 25, 1959; Remarks of Sen. Morse).

One of the broad principles enunciated in Title IV was the right of members to be candidates subject to "reasonable qualifications uniformly imposed." No definition of reasonableness was supplied. But in light of the broad objectives of the Act, it is plain that a rule would be unreasonable if its effect was to preclude opposition to incumbent leadership, i.e., if it disqualified the dissident elements of the membership from challenging incumbents.

That is, indeed, how this Court interpreted the clause in *Wirtz* v. *Hotel, Motel & Club Employees, Local 6, supra,* 391 U.S. 492. The case involved the validity of a union bylaw allowing only those who had held prior office in the union to run for higher office. The Court noted that only seven percent of the members had held prior office; that many of these had been appointed by the incumbents to fill vacancies, thus "enabl[ing] the incumbent group to qualify members for elective office by a practice not available to dissidents"; and that in practice endorsement by the incumbent group was necessary to get elected to lower office, thus making it impossible for dissidents ever to qualify to run for higher office.

The Court declared that *"control by incumbents through devices which operate in the manner of this bylaw*

is precisely what Congress legislated against in the LMRDA." 391 U.S. at 505. (Emphasis added.) More generally, the Court stated:

> "Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499.

It is difficult to see how this legislative objective is thwarted by the meeting attendance rule involved in the instant case. The rule disqualifies no one. Every member can qualify by the non-burdensome step of devoting less than two hours, every other month, on the average, to his union's affairs. Moreover, as we have noted, the rule actually fosters the objectives of the Act, for by requiring dissidents to attend local union meetings, it assures that incumbents cannot administer the affairs of the union in an unbridled or arbitrary manner.

In practice, the rule does not entrench incumbent leadership. The record in this case and in others involving the same meeting attendance rule shows quite graphically that in the Steelworkers, incumbent local officers are regularly challenged by and regularly lose to candidates who qualify under the rule. Here, for example, in the ten years preceding the trial, there had been five local union presidents and wholesale changes in other officers. Since the trial, in successive elections, Bernard Frye (complainant in the instant case) first won the presidency of the local and then lost it. Both he and his successor met the requirements of the rule.

The same history of political upheaval is found in the *Local 1299* case where incumbent officers were always challenged, there were contests for virtually every office and on

occasion, entire incumbent slates were defeated. Indeed in that Local, incumbent presidents rarely won (Br. App. A, 3-9).

So, too, in *Local 5724,* in the very election challenged by the Secretary, there were twenty-four candidates competing for nine offices. Four candidates ran for president, four for vice-president, three for financial secretary and six vied for three trustee positions. Several incumbent officers lost in that election including the Local's top executives, its president and financial secretary. The record there is significant for another reason. It establishes that in one Steelworker district (Chicago-Gary) where locals in excess of 1,000 members are common (130,000 members in 225 locals), *only one* incumbent president in such a local managed to win reelection (Br. App. B 45).[27]

As we have shown, the rule neither insulates incumbent officers from challenge nor perpetuates their holding of office. In light of the record in these cases, it is not surprising, therefore, that the Secretary has introduced no evidence and makes no claim that the Steelworkers meeting attendance rule does in fact operate to preclude election contests and entrench leadership. Yet it is these abuses which the LMRDA was designed to curb and which are said to warrant the Secretary's intrusion into the union's internal affairs. *Wirtz* v. *Hotel, Motel & Club Employees, Local 6, supra,* 391 U.S. at 499. The absence of such abuses is thus one more reason why the rule should be allowed to stand, free of the Secretary's "election straitjacket."

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[27] At the trial in the *Local 6799* case, the Steelworkers sought to introduce two exhibits showing that in Steelworker locals generally, the meeting attendance requirement does not preclude contests for union office. That offer elicited an express disclaimer by the Secretary of any contention that the meeting attendance rule operated to perpetuate incumbents. See Appendix at 162-165, 209-212 in *Hodgson* v. *Local 6799, United Steelworkers of America, supra,* 403 U.S. 333.

The widespread incidence of meeting attendance requirements in union elections further strengthens the view that Congress did not intend their abolition. The Supreme Court has noted, with respect to another provision of the Act, that Congress did not intend to outlaw provisions in widespread use, but only those employed by the small minority of unions having undemocratic procedures, *Musicians* v. *Wittstein*, 379 U.S. 171, 178 (1964).

Constitutions of international unions having twenty-five percent of all of America's union members impose meeting attendance requirements as a candidacy qualification for local union office, and in all probability a larger percentage of local unions has such a requirement.[28] It is hardly likely that Congress—having heard no testimony of abuses stemming from meeting attendance rules, and making no mention of them in the legislative history—intended to strike down so widespread a practice by its requirement that candidacy qualifications be "reasonable."

Of course, a particular meeting attendance rule may be so harsh, or its application so unfair, as to have the effect of entrenching incumbent leadership. Indeed, there have been several cases in which such a finding was made.[29]

[28] The twenty-five percent figure was derived from a survey of international union constitutions made by the Labor Department's Director of Research (App. 45-48). An additional seven percent of union members are in unions whose international union constitutions expressly leave the matter to local union option (id.). The remainder of the international constitutions are silent, but, the Secretary's Director of Research testified that some local unions in these internationals have adopted meeting attendance requirements in their *local union* constitutions and by-laws (App. 34). There are 45,000 local unions in the United States (*id.*).

[29] See, *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.*, 244 F. Supp. 745 (W.D. Pa. 1965), *affirmed*, 405 F.2d 176 (3d Cir. 1968); *Wirtz* v. *Local 66, Glass Bottle Blowers Assn.*, 268 F. Supp. 33 (W.D. Pa. 1967); *Wirtz* v. *Local 262, Glass Bottle Blowers Assn.*, 290 F. Supp. 965 (N.D. Cal., 1968); *Wirtz* v. *Independent Workers Union*, 272 F. Supp. 31 (M.D. Fla., 1967).

These cases are so unlike the instant case that, by contrast, they prove the validity of the Steelworkers' rule. Thus the rules were much harsher than that in the present case; they in fact favored incumbents; and their effect was to leave all or virtually all of the incumbents without opposition.

C. The Reasons Cited by the Court of Appeals for Invalidating the Meeting Attendance Rule Are Without Merit.

The court of appeals struck down the meeting attendance rule on two grounds:

(1) The rule is unreasonable because only a small percentage of the members qualified; and

(2) The rule is unreasonable because of the three-year period which, the court says, is apt to entrench incumbents. We discuss each of these grounds below, and show why neither withstands scrutiny.

(1) *The Percentage Qualifying.*

At one point, the court of appeals appears to eschew any test which would hold *per se* unreasonable an eligibility rule under which an "arbitrary percentage" of members failed to qualify to run for office (Pet. App. 7a). Nevertheless, it is abundantly clear from the opinion as a whole, that such a test is precisely what the court applied. Its major thesis was that a rule which renders ineligible a "high" percentage of the members is unreasonable under the Act, without more.[30] In support of this thesis, the court below

[30] "[I]ts effect of severely restricting the number of potential candidates for union office shows it to be clearly unreasonable in this case" (Pet. App. 7a). "Of course, if a very high percentage of the membership is disqualified from seeking union office by a rule, as was the situation here, that fact alone may justify a finding that the rule is unreasonable." (Pet. App. 8a.) The court's endorsement of *dicta* appearing in *Brennan* v. *Local 3911, United Steel-*

placed almost total reliance on this Court's decision in *Hotel Employees*. Indeed it is evident that the Seventh Circuit read the decision as *compelling* invalidation of the meeting attendance rule because of its impact. Thus the court states:

> "Later in the *Hotel Employees* opinion, Justice Brennan observed that because the objective of Title IV of the Act (29 U.S.C. §§481-483) is to insure free and democratic elections, it was plain that a candidacy limitation rendering 93% of union members ineligible for office 'can hardly be a reasonable qualification.' 391 U.S. at 502. Here the meeting attendance rule disqualified 96.5% of the Local Union's membership from office, so that it cannot be deemed a reasonable qualification either." (Pet. App. 7a.)

The Seventh Circuit, we submit, has misconstrued and overextended the reach of this Court's decision.[31] Simply put, the court below failed to read the language it quoted from *Hotel Employees* in the context of the specific rule at issue in that case. There, this Court did not end its analysis

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workers of America, 372 F. Supp. 961, 967 (N.D. Ill. 1973) underscores the point. There, *Hotel Employees* was said to render the Steelworkers' rule invalid based *solely* on the high percentage of members ineligible.

[31] It appears that the lower court's decision is based on an erroneous factual premise as well. Thus the finding that 96.5% were ineligible (Pet. App. 7a, n. 5) is, as we explained at pages 7-8 herein, questionable to say the least. No one knows how many members of this Local were eligible by virtue of a combination of meetings attended plus work credits. The Union had no occasion to check every member's records and the Secretary did not do so either. Work records were checked only for those members who had attended fifteen or more meetings and of these, one member qualified by virtue of nine work credits. If one member was entitled to nine work credits, the chances are that other members were entitled to the same number. Any in this category who had attended between nine and fifteen meetings would thus be added to the twenty-three the court found eligible.

with numbers and percentages. They were but the starting point for a four-page discussion which relied heavily on the fact that the prior office holding requirement in question vested exclusive control of eligibility in the hands of incumbent officers who, by using their appointive powers as they saw fit, decided who could and could not become eligible for office in the local. 391 U.S. at 502-505.

On its face, the prior office holding rule in *Hotel Employees prevented* members from qualifying who wished to do so. As such, it stands in marked contrast to the meeting attendance rule. Another leg in this distinction, stressed by the district court herein, is that compliance with the meeting attendance rule is not in the hands of entrenched leaders but is left to the member himself (Pet. App. 20a). In a real sense, the Steelworkers' rule disqualifies no one (*id*). Instead, members take themselves out of the running as a matter of free, personal choice. *Brennan* v. *Local 5724, United Steelworkers of America, supra*, 489 F.2 at 888-889. Every member *could have* qualified merely by taking the unburdensome step of attending one-half of the meetings. *Shultz* v. *Local 6799, supra*, 71 LRRM at 2823.

The Sixth Circuit in *Local 5724* aptly summarized the difference between the instant case and *Hotel Employees* as follows:

> "The self-evident restrictive character of the 'prior office holding' rule, when accompanied by the numerical effect of drastically limiting the number of eligible candidates for office, justifies the result in *Hotel Employees*. It is, however, erroneous to conclude, as the Secretary contends, that *Hotel Employees* commands blind adherence to a per se theory even where, as here, the rule does not by itself disqualify anyone and . . . does serve legitimate union objectives." 489 F.2d at 889.

Carried to its logical extreme, the legal approach applied by the court of appeals herein would invalidate any meeting attendance rule—*whatever* its duration and no matter how small a share of attended meetings is required—provided that the percentage of members qualifying does not satisfy the court's self-created standard of participatory democracy. (Indeed any qualification is potentially "unreasonable" under this approach even if it asked no more of a candidate than his or her signature on a document stating the candidate's intention to run.) As a consequence and notwithstanding the legitimate purposes that meeting attendance rules were designed to serve, unions would be compelled to apply them at their peril. For unless the "numbers" satisfied the court, the election would be set aside, thereby leaving unions in the untenable position of having the validity of their rules turn upon whether the membership was willing to comply.[32]

Paradoxically, such a result would be in direct conflict with relevant provisions in the Secretary's published Interpretive Manual, which, as we have noted, remained operative even subsequent to the 1968 *Hotel Employees* decision and were in effect at the time the election challenged herein was conducted. In upholding the reasonableness of fifty percent meeting attendance rules of two-year duration, the Manual did not state an exception for cases where only a small percentage attended (App. 55).[33]

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[32] In *Martin* v. *Lodge 636, Boilermakers,* 245 F. Supp. 375 (W. D. Pa. 1963), the district court observed that the rule required attendance at one meeting in each of the five quarters preceding election. Of 175 members, only 14 qualified. The court nonetheless found the rule reasonable, noting that attendance was not burdensome, and emphasizing that to invalidate the rule *"would hold in effect that there can be no attendance requirement whatever in this union."* (Emphasis added.)

[33] The Manual did note an exception for situations where attendance would be unusually difficult, for example, if the location of the union hall was remote from the plant or the members' home. Plainly, no such exception is applicable here.

In late 1966, the Secretary withdrew a lawsuit he had filed against another union alleging that an otherwise reasonable rule *was* unlawful because only a small percentage qualified. In explaining the withdrawal, the Secretary concluded, after "a general review of attendance requirements," that a rule should *not* be invalidated simply because a small percentage actually qualify (App. 50-53).

We believe the Secretary's reasoning in deciding to withdraw the earlier lawsuit against a different union clearly represents the correct interpretation of the Act. We adopt it as part of our argument on this point (*id.*):

> "[M]easuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied."* (Emphasis added.)

We would add but one other point. If percentages are determinative, the International Union is confronted with an unmanageable administrative burden. There is no way it can feasibly determine, in advance, which of its 5,200 locals may apply the rule and which may not. The adoption of any arbitrary percentage figure will leave the Steelworkers no choice but to abandon the rule altogether, at a sacrifice of the substantial values which it believes are served by the rule.

(2) *The Three-Year Period.*

The second reason advanced by the court of appeals for its conclusion is that the Steelworkers' meeting attendance rule, because it spans three years, tends to entrench incumbent leaders (Pet. App. 9a). Moreover, in holding that the reasonableness of a two-year rule does not determine the reasonableness of a three-year rule, the court portrays the latter as fifty per cent "harsher" in the number of meetings which a member must attend and in the time limitations imposed on one's decision to seek office (Pet. App. 10a).

Implicit in the court's conclusion is the proposition that a three-year rule is more restrictive and would render more members ineligible than would a two-year rule. But this proposition is hardly self-evident and there is no record evidence whatever to support it in this case. Since only fifty percent attendance is required, it is possible that more members might qualify under a three-year rule than would under a two-year rule. There is more "make-up" flexibility. More probably, the length of the period has *no* significant impact on the number qualifying.

Actually on this score, the Secretary evidently agrees with us. His expert acknowledged, in another case, that the Department of Labor has no statistical data or empirical information which tends to prove the supposition that more members would qualify under a two-year rule (Br. App. B 58). Indeed the top officials representing the Secretary in discussions with the Steelworkers acknowledged that those interested in union affairs would qualify no matter how long the period while those not interested in union affairs would not qualify no matter how short the period. (See Appendix at 101 in *Hodgson* v. *Local 6799, United Steelworkers of America, supra,* 403 U.S. 333.) Supporting this view are the Sixth Circuit in *Local 5724* and the district court in *Local 1299*. Neither saw a significant difference

between a fifty percent meeting attendance rule covering a two-year period and one spanning a three-year term.

More important, there are no facts showing that leadership is "entrenched" by the three-year rule in this or any other Steelworker local. Indeed the record herein shows otherwise—as does the current round of Steelworker local union elections in which incumbent after incumbent has gone down to defeat, including the president of Local 3489. It is strange that the Secretary—who otherwise shows great interest in impact—has introduced not one shred of evidence showing that the Steelworkers' rule in fact produces the abuse against which Congress legislated.

On the other side of the balance, we note that one of the principal purposes of the rule—to assure membership attendance at meetings and a check against unbridled control of meetings by the incumbent officers—would be lost if the rule were shortened. The term of office is three years. If the attendance period were shortened, there would be no incentive for non-officers to attend at the beginning of a term.

We submit that there is no showing which would warrant treating three-year rules differently from two-year rules under the Act. Indeed a three-year rule is *more* reasonable in the Steelworkers, because the term of office is three years. Finally, since the rule was extended from two years to three by rank-and-file delegate action, without support of the Union's hierarchy, and it was recently readopted by those delegates in the face of proposed changes, it can hardly be said that its imposition is undemocratic.

CONCLUSION

For the reasons set forth above, the decision below should be reversed.

DATED: May 12, 1976

Respectfully submitted,

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APPENDIX A

Testimony of Steelworker Staff Representative John Sadvery in *Shultz* v. *Local 1299, United Steelworkers of America,* 324 F. Supp. 750 (E.D. Mich. 1970), *aff'd in part sub nom., Hodgson* v. *Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971). Transcript of the proceedings, pages 443-474, Appendix on Appeal, pages 345-376.

JOHN SADVERY,

being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FRANKEL:

Q. Mr. Sadvery by whom are you employed?
A. United Steelworkers of America.
Q. In what capacity?
A. Field representative.
Q. Are you assigned to a district?
A. District 29.
Q. How long have you been a staff representative?
A. Since January 1, 1960.
Q. What did you do before that—by whom were you employed before that?
A. Great Lakes Steel Corporation.
Q. When did you first go to work for Great Lakes Steel?
A. September 28, 1938.
Q. What was your job at Great Lakes before you became a staff representative with the International?
A. Well, I was full time in the Local Union. I held full time office from 1952 until 1960.
Q. When you worked in the plant, what were your jobs?
A. I worked as a scarfer from 1938 until 1944, May of 1944, when I went into the United States Navy in World War II; and I was in the Navy until January 31, 1946.
Q. Did you return?

A. And upon my return, I went back into the plant, back into the scarfing department; and in October of 1947, I had transferred to the boiler house and I worked in the boiler house of Great Lakes Steel Corporation.

Q. Have you, Mr. Sadvery, ever held any office or position with Local Union 1299?

A. Well, —

Q. Start from the beginning?

A. Well, of course, my union activity was prior to coming to 1299. I was a member in, I believe 1937, when I worked at Jones and Laughlin Steel Corporation, Pennsylvania.

Q. What were you a member of there?

A. Of the SWOC, Steelworkers Organizing Committee.

Q. That was before the United Steelworkers of America had achieved its title?

A. Right, that wasn't until 1942.

Q. Now, when you came to — beginning at Great Lakes, however, have you held any positions or offices with Local 1299?

A. Well, I joined the Union before there was a recognized contract between the United Steelworkers of America and Great Lakes Steel Corporation. It was in 1941 that we struck for recognition, and subsequent to striking for recognition, we were recognized by the company and I then became a steward in the scarfing department. That was — that would be some time in 1941, after June.

Q. How long were you a steward?

A. I served in the steward capacity up until —from 1941, up until, actually, 1947, except for the period of time that I was in service; but in 1942, I became a member of the Executive Board as a Guide.

Then I still retained the stewardship in my department. Then in 1943, at that time, we only had one year elections, every year we had an election in the Union. And in 1943, I served, I believe, as a Guard or a Guide at that time.

Then in 1944, is when I went into the service. So I was

absent for that election in 1944, which would have been held in June of that year. I was absent in '45 for that election.

Then, in '46, when I returned, we had a change in '46 to two-year terms as officers, or election for officers and grievance committeemen. And I was nominated as Vice-President in the May meeting of '46 and I was elected as a Vice-President from 1946 until 1950.

Q. What happened in 1950?

A. In 1950, our whole slate was defeated—the entire slate was defeated. We were the incumbents for four years, except for some changes in office during that period of time.

And the Treasurer of the Local had resigned his position, some six months — within a six-month period.

Q. The Treasurer who won in 1950?

A. Who won in 1950, off of the Back to the Membership Slate. And a vacancy was declared and was put up for election. And I run for this job as one of four individuals. There was three others in this hotly contested race for Treasurer. And I came out on top in that election, in fact, I got more votes than all three of my opponents put together.

And I served for eighteen months in that capacity as Treasurer of the Local.

Then, in 1952, I ran for full time grievance committeeman. That was the Vice-Chairman's job on the Committee for Good Leadership Slate at that time. And I won that election, incidentally, for that two-year term by some nine hundred votes.

Then I run again in 1954, and I was —

MR. BARNARD: Your honor, I don't know if Mr. Frankel intends to connect this up, but I don't quite see the relevancy of going through all of this background.

THE COURT: Mr. Frankel.

MR. FRANKEL: I intend to connect it up; number one, I am going to show that this witness is in fact a far more expert than Mr. Lahne whose testimony is already in the record on how people find out about contracts.

Mr. Sadvery has served in this Local and been connected with it for thirty years, something like that, and he knows more about it than —

MR. BARNARD: I am going to —

MR. FRANKEL: We are also going to go through with him on elections and show when incumbents get beat—the fact has already come out that an entire incumbent slate was defeated — and there are a lot more instances on this. I am going to go through with that. I think it would be very relevant because the Government contends that our meeting attendance rule entrenches candidates, entrenches incumbents, and I am going to show that it doesn't.

MR. BARNARD: I can stipulate to Mr. Sadvery's background and his knowledge of the United Steelworkers.

With regard to going back to the elections in the '50's, this is an election which was held in 1967, and, that part, I don't see is relevant, as to the '50's and the '40's.

MR. FRANKEL: We will get to the '60's too.

THE COURT: Well, the court will allow him to proceed.

You were at the point where you had finished the 1950 election. You were saying you won the election by nine hundred votes.

THE WITNESS: In '52.

THE COURT: In '52.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q. Did you run again in 1954?

A. Yes, I run in '54 for, I believe, the Chairman of the Grievance Committee at that time — either that or Vice-Chairman — I forget, because we had some changes; and I had won against my opponent by some twelve hundred votes.

And in 1956, I run for Chairman of the Grievance Committee and my opponent at that time said — well, I know that you are a strong candidate but I am not going to —

MR. BARNARD: Objection.

A. — let you run alone.

THE COURT: Just a minute. The court will sustain the objection.

Q. Continue.

A. All right. Well, I won it by some nineteen hundred votes. And then —

Q. But you did have opposition?

A. Well, I sure had. I had to work.

In 1960, I mean, in 1958, I then headed the Unity Slate as President and I run for President of that Local Union in 1958. And with strenuous opposition from the opposition party. And, of course, I won that by nine hundred votes.

And then I served in that term for some eighteen months; and, then, Thomas Shane, District Director at that time, had asked me to accept an appointment as a field representative for the United Steelworkers of America, which I did.

Q. Now, since you became a field staff representative of the Steelworkers in 1960, have you continuously serviced Local 1299 until today?

A. That has been my life since almost thirty-two years.

Q. Now, Mr. Sadvery, you have testified concerning some slates. Can you tell us what the practice is within the Local Union concerning slates?

A. Well, since the recognition strike in '41 and the establishment of a contract between the company and the Union, there has always, always been slates, opposition factions, in this Local Union. There has never been a time that there hasn't been opposition of the offices.

Q. All right, now, if you were to break it down, would it be fair to characterize the slate, whatever their names are, as one being the in group, composed substantially of incumbents, and the other an out group?

A. Well, yes, but also incumbents also cross over slates.

Q. In other words, sometimes incumbents will go from what is the in slate and become candidates on the out slate?

A. That happened in 1950; that happened in other elections that incumbents cross over and you have a crossover. It is not always the ins, but, normally, it is the outs that is trying to get the ins out.

Q. Now, Mr. Sadvery, in these slates, would you tell us whether or not there are full slates of opposites to the incumbents on slates, or —

A. Well, to my knowledge, other than maybe one or two minor jobs that has ever occurred, that there has been always opposition, in other words, you may have a lack of enthusiasm for somebody to run for a Guide's job — he may not want to run for it, but the President, the Vice-President, the Treasurer, the Financial Secretary, the grievance committee there is always — there has been strenuous opposition in those jobs.

Q. Now, beginning in 1941, could you tell us some examples of incumbent officers who have lost elections?

A. I sure can, because I supported Mr. Fifer in the '41 — the first election since there was a contract, and I went down to defeat with Mr. Fifer in that election; and Stanley Cook had knocked Mr. Fifer out, plus the whole slate, the whole slate was defeated and Stanley Cook's slate come in.

Q. That was in 1941?

A. That's right.

Then in 1942, we knocked Mr. Cook and his slate out; and in '43, we were sustained again in that election. And I was a Board member in '42 and '43.

Now, in '44, naturally, I went in the service so — but I received a newspaper and I know that there was a change of officers because Lou Decker did not choose to run at that time and Jack Mahan became the President. So he was the President in '44 and part of '45, while I was in service, and

Fritz Boomer then took over as President when Jack Mahan resigned to take the grievance man's job.

Then in '46 is when we — I came back from service and Fritz Boomer, who was the President, we met on Glenwood Street and the caucus defeated Fritz Boomer for President and he was not — he then chose not to run, to try to buck the caucus.

Q. He was the incumbent who lost in his own caucus; is that right?

A. Yes, sir.

Q. The caucus put up another candidate for President?

A. Well, both sides had caucuses since 1941, so you had to make the caucus or you couldn't win. There was only one man the I ever knew that won as an independent.
You just don't buck the caucus.

THE COURT: Who was that man who won?

THE WITNESS: Eddie McNamara. That was in 1948.

THE COURT: Thank you.

Q. (By Mr. Frankel, continuing): Now, you have already testified that in 1950, the entire, generally speaking, incumbent slate lost?

A. Right.

Q. Then in '52, in turn, the entire what was then incumbent slate lost?

A. In '52 — you see, in '50, I told you, the incumbent had crossed slates, so we were defeated — we were wiped out except these two incumbents that had went to the opposition. But in '52, when we formulated our slate, these two incumbents were knocked out of their jobs because we had taken all of the jobs in the Local Union, including the division grievance job.

Q. Who was the President in '50 that was defeated?

A. LaVerne Shank, — Charles Younglove was defeated in '50 and I was the Vice-President, one amongst the rest that were defeated.

Q. Then did Mr. Younglove win in 1952?

A. Charles Younglove won as President in 1952.

Q. Now, how about thereafter, have incumbents lost thereafter?

A. Well, in — I am trying to take the years as they went up.

Well, for sure in 1960, the incumbent President, Martin Tarlowicz, was —

THE COURT: How do you spell that, Tarlowicz?

THE WITNESS: (Spelling) T-a-r-l-o-w-i - - -

THE COURT: i-c-z?

A. — i-c-z, you are right.

Martin Tarlowicz was defeated as an incumbent President; George Kenyon was defeated as incumbent chairman of the grievance committee.

Q. Now, you testified before that only one independent has won. However, do independents still run?

A. They try.

Q. Run for office?

A. They try. It is pretty hard to win. You got to be well known, you have to have a lot of activity in that Local to make it.

Q. It is kind of hard to reach nine thousand members without support?

A. That's right. I know I would never try it.

Q. Now, in 1960, do you recall how many candidates there were for Vice-President?

A. I believe there was three — I'm not sure, but I believe there was three.

Q. Now, by candidates, I am speaking of people that appeared on the ballot?

A. Right. I think there was three.

THE COURT: Keep your voice up, sir.

A. Oh, pardon me.

Q. Now, after the 1962 election, there was an administrator appointed; is that right?

A. Yes, sir.

Q. Then in 1965, the Local Union held elections again?

A. Well, the administrator released the Local back to the members in June, which was to take effect, actually, in July of that year, '65.

Q. Now, Mr. Sadvery, during all these elections, did the Union have some meeting attendance rule?

A. During all of these elections?

Q. Yes. You were in all of these elections?

A. Oh, yes.

Q. Was the rule when there were two-year elections, there was a two-year rule, like our three-year rule now?

A. One year, the one year, I believe, was six out of twelve; then we went to two and you had to have twelve out of twenty-four; and I think that took us back to '46; then in, I think, '67, we went to the three-year term, by — this, incidentally, was by a constitutional enactment by the convention.

Q. This was in 1967?

A. This became eighteen out of thirty-six.

Q. So, in all cases, the measuring period is equal to the term of office?

A. Yes, sir.

Q. Now, Mr. Sadvery, can you give us a brief description of the plant layout or the plant — the layout of the plants?

A. Well, the plant in general is segregated into three parts, which consist of Great Lakes Steel Corporation, that is, the blast furnace division or Zug Island; and Zug Island consists of four huge blast furnaces, coke ovens, coal handling, the ore docks, the sinter plant.

Q. That is (spelling) s-i-n-t-e-r?

A. S-i-n-t-e-r. And the transportation and mechanical and electrical departments of that area.

Now, that would be north of the main plant, some mile and a half, maybe two miles.

Q. Briefly, what is in the main plant?

A. In the main plant is the eighty inch rolling mill — that's the rolling mill — and the slab yards; and then, going from north to south, is the maintenance shop, the open hearths, the soaking pits, the finishing departments, the scarfing yards, the cold mill and the B. O. P., electric furnaces, and, again, transportation and mechanical and electrical areas.

Then, the Michigan Steel Division, which lies some southwest of the main plant, consists of heat treat, storage and coil storage for shipment to customers of coils; and that's about it.

Q. All right, now, Mr. Sadvery, you — did you service the Local during the period of the administratorship?

A. Yes, sir.

Q. Between '62 and July of '65?

A. Yes, sir.

Q. Did you work closely with the administrator?

A. Yes, sir.

Q. Now, you were aware that in 1965, in the Local Union election, the administrator conducted the election without using — or waiving the Union's meeting attendance requirement; —

A. Yes, sir.

Q. — is that correct?

A. Yes, sir.

Q. Do you know why he did that?

A. Yes, because he didn't have that many meetings, for one thing. He didn't have that many meetings, for one thing. He didn't have — the meetings were very infrequent and there was no motions, no seconds, no order of business other than what he wanted to conduct. He was the sole autonomy of that Local from '62 to '65.

Q. Do you know whether or not meeting attendance records were kept during this period?

A. Absolutely not.

Q. Now, Mr. Sadvery, have you attended the regular meetings of Local Union 1299?

A. You mean since its inception?

THE COURT: Keep your voice up, sir.

THE WITNESS: I'm sorry.

Q. Did you attend the meetings regularly?

A. I have missed very few.

Q. How many did you miss?

A. Well, since '41, I probably could count them on my two hands.

Q. All right. Mr. Sadvery, tell us what goes on at those meetings?

A. Well, in the general meeting, as actually spelled out in the Bylaws, you naturally have formalities that you go through, such as the pledge of allegiance, the reading of the minutes, communications, but, in the meetings, the general meeting is brought about for the basis of not only trans — to bring about the business, the administrative part of the business of the Local Union, but there, there is reports given that cannot be given only through a department, in other words, by the calling of this general membership meeting, the reports are given on a broad basis to these nine — and at one time we had eleven thousand eight hundred members. It is given on a broad basis to the general membership. Now, you have —

Q. What kind of reports are we talking about?

A. Well, you have first the report of the Financial Secretary and the Treasurer. Well, the membership then knows the disbursement of their monies, the income that comes in; they approve the spending of the money and sometimes they reject the spending of the money.

Now, those reports are given, normally, first.

Then you have reports of the President. The President's report can be detailed because his responsibility is great. He is, first, number one, he is the top administrative officer in the Local. He is ex-officio of all committees, and when I am saying ex-officio of all committees, he is the ex-officio of the grievance committee which is a huge committee, not only the full time officers, but the divisional officers, some eleven divisions, which is ten divisions plus the blast furnace division; and he is head of the safety committee, the construction committee, the convention delegates, the county delegates, the Steel Council delegates — this man has a huge responsibility both in that area as well as in community services, whether it be talking with the mayors of the various cities about pollution, about civil rights, or with civil rights committees, different committees, his job is tremendous so the report that he reports on is detailed, which this then emanates from him and is able to go to the general membership as a whole because there is a cross section of people that come into this general meeting.

THE COURT: Excuse me. It is three o'clock and I have an attorney I have to swear in for admission to the local Federal Court.

We are stopping off where you are detailing the responsibilities of the President so that we will know where we are when we resume.

You may step down.

(Witness leaves stand.)

THE COURT: As it relates to this matter, we are in recess, but I will take up this other matter at this time.

(Whereupon a recess was taken, after which the following ensued:)

MR. KOVINSKY: If the court please, may I approach the bench for a moment?

THE COURT: Surely. Mr. Barnard, all counsel.

(Bench conference.)

(Witness resumes stand.)

Q. (By Mr. Frankel, continuing.) Mr. Sadvery, you were describing the President's report at the meetings?

A. I think I was describing, oh, I think, yes —

THE COURT: The awesome responsibility, yes.

A. And the responsibility — one of his responsibilities is, he heads up the safety committee, actually, under Section 14 of the agreement. He holds quarterly meetings with the company along with the safety chairman.

Now, his primary purpose is to back up the play and maybe, wherever there is a fire that occurs, say, arguments between management and the Union, he is — he normally comes into play to render assistance to whatever committee it is necessary to give assistance to.

Q. Now, at the meetings, does he report on his activities with the safety committee?

A. He, amongst many of the reports that he gives, he will almost touch on all the subject matters, safety, construction, grievances, discussions that he has had with the company concerning various activities.

Now, in addition to this, he is assigned other duties by the Executive Board, whenever necessary.

Now, he is also — actually heads up the negotiating committee during contract negotiations. Our negotiating committee is made up of the divisional grievance man in a full time representative and naturally, him being the leading officer in the Local, he heads up this committee in discussions with the company, although in negotiation, the committees may be broken up into small segments because of the complex discussions that may be going on. But he may be going from one group to the other during these discussions.

Now, this is mainly, probably the bulk of his activities. And then you will have reports in the Local Union meetings, like the Recording Secretary, who is also an officer of the Local Union, but is charged with the responsibility of administering the S. U. B. agreement; he is saddled with the responsibility of the pension agreement; he is saddled with the

responsibility of administering the insurance agreement; and also does occasionally get into discussions on the extended vacation. Now, —

Q. S. U. B., that refers to supplemental unemployment benefits?

A. Yes, that was negotiated.

All right, now, what happens there is that he will give reports in the general meeting on these subject matters and changes and then, say, settlements that have been made.

Q. All right, now, do you make any reports as staff representative at the meetings?

A. Well, there is more reports than this by those who are primarily charged with the administrative end and also negotiating — and with the agreement between Great Lakes Steel.

Now, you have reports by the full time grievance representatives, of which there is three. That is, the first, second vice-chairman, first vice-chairman, and the chairman. Now, they go into detail on, actually, the contract. They report on grievances settled; they report on discharge cases; they report on many, many different problems that is a result of the contract or interpretations in respect to changes that may come as a result of the discussions with the company.

Q. Now, are these grievances or do some of these grievances on which they report involve contract interpretation?

A. Oh, yes, definitely.

Q. Is there a contract in effect between Great Lakes Steel and the United Steelworkers?

A. Yes, sir.

(Whereupon Defendants' Proposed Exhibits 25, 26, 27, 28 and 29 were marked by the reporter.)

(Mr. Frankel shows proposed exhibits to opposing counsel.)

Q. Mr. Sadvery, I hand you a document which has been marked for identification as Defendants' Exhibit 25 and ask you whether that is the contract in effect between the Great Lakes Steel Corporation and the United Steelworkers of America?

A. Yes, sir.

Q. That is the agreement presently in effect?

A. That is the present agreement that was negotiated August 1, 1968.

Q. Now, there was a contract substantially similar to that in effect in 1967, was there, with some changes that were negotiated, but the subject —

A. The '65 agreement.

Q. '65. That was in effect in '67?

A. Right.

MR. FRANKEL: I am going to offer Defendants' Exhibit 25 — is that number 25?

THE COURT: 25.

THE WITNESS: 25.

MR. BARNARD: 25.

MR. FRANKEL: Your honor, that is not in our list of exhibits, however, since counsel — since the Government has broadened its list, I feel I ought to be permitted the same opportunity.

MR. BARNARD: I have no objection to Mr. Frankel broadening his list. I have an objection to Exhibit 25 and I would suspect that I will have the same objection with the remaining.

I think this is going a little far afield in the examination as well as some of these documents. I just don't consider them relevant.

THE COURT: Mr. Frankel.

MR. FRANKEL: Your honor, we are offering these documents to establish the sort of a complex job it is to be a Local Union officer at this time and what sort of a complex document it is that they have to deal with and to interpret

and apply to nine thousand members in a complicated industry.

This is in support of our position that the most effective way that you can become an officer of the Union is to attend meetings where these contracts and the various complicated agreements are explained and the grievances are discussed and that helps to qualify for membership and explains why we have a meeting attendance requirement.

THE COURT: Well, the court will allow it in evidence, subject to your objection, Mr. Barnard.

Now, what other exhibits do you have — can the court rule on them all —

MR. FRANKEL: Yes.

THE COURT: — for the purpose of saving time?

MR. FRANKEL: Exhibit 26 is entitled Supplemental Unemployment Benefit Plan.

THE COURT: Just a minute. You call it S. U. B.?

MR. FRANKEL: S. U. B.

THE COURT: All right.

MR. FRANKEL: Exhibit 27 is the pension agreement.

THE COURT: Exhibit 27 is the pension.

MR. FRANKEL: Yes. Exhibit 28 is entitled Savings and Vacation Plan, referred to as SVP.

Exhibit 29 is the Program of Insurance Benefits, described as P. I. V.

I will offer 26, 27, 28 and 29 into evidence.

THE COURT: Mr. Barnard, you have an objection to each of these on the same grounds?

MR. BARNARD: On the same grounds.

THE COURT: Very well, the court will receive 26, 27, 28 and 29 into evidence, subject to your objection, Mr. Barnard.

Mr. Frankel, I don't think it will be necessary for you to go into each — into the substance of each one of these exhibits.

MR. FRANKEL: No, I don't intend to, your honor, just briefly to describe what they are and that's all.

MR. BARNARD: They speak for themselves, your honor.

THE COURT: The court has an idea of what these exhibits are and their substance, maybe not as to the specifics.

MR. FRANKEL: The only other thing I wish to show your honor is the extent to which they apply to the members of the Steelworkers Union. That's the only thing I wish to develop with respect to those and it will take a couple of questions.

Q. (By Mr. Frankel, continuing.) Mr. Sadvery, Defendants' Exhibits 25 through 29, the contract and the various benefit supplements, are these agreements substantially the same for all eleven basic steel companies with whom the Steelworkers negotiate as a group?

A. Substantially the same except that some sections of the contract might vary, such as seniority or maybe the vacation clause or the overtime clauses.

Q. But the benefit clauses are essentially the same?

A. They are the same.

Q. And those basic eleven companies are U. S. Steel, Bethlehem, J & L — Jones and Laughlin — Republic Steel, Youngstown Steel — Youngstown Sheet and Tube—Armco, Allegheney Ludlum, Colorado Fuel and Iron, Pittsburgh Wheeling Steel Corporation, National, of course — did I forget any?

A. I think that's eleven — I think its eleven — sounds like eleven.

Q. Now, in addition to these eleven steel companies, there is a group of companies entitled Me-Too corporations?

A. Such as McLouth Steel.

Q. Such as what?

A. McLouth Steel Corporation, Detroit Steel.

Q. Now, these companies have substantially the same contract and substantially the same benefits as in Defendants' Exhibits 25 through 29?

A. Well, they usually wait until we negotiate in the eleven steel companies and then they apply those benefits or whatever has been negotiated to the type of mills that are called Me-Too, such as McLouth or Detroit Steel.

Q. That is why they are called Me-Too?

A. That's right.

Q. All right, now, can you give us an estimate of how many members of United Steelworkers are covered by these agreements?

A. In the basic steel?

Q. Yes.

A. Oh, something in excess, probably, of four hundred thousand men, employees.

Q. Now, you testified that the Recording Secretary makes his — has something to do with the administration?

A. Yes, he has that responsibility.

Q. Specifically, what does he do?

A. In the administration end of it?

Q. Yes.

A. Well, he records the minutes of the general meeting.

Q. Specifically, what has he to do with the contracts and benefits?

A. Oh, with the contract items?

Q. Yes.

A. Well, —

THE COURT: Just a minute, Mr. Sadvery.

(Pause until fire siren subsides.)

THE COURT: You may proceed.

A. Well, he has an office in the Local 1299 headquarters, which he receives at this office various members of our Local Union on these subject matters such as S. U. B., the pension

or insurance or even other matters that pertain to the Local Union. Now, if they are in the line of complaints, he will take those complaints up.

Q. With the company?

A. With the company, yes, he will either meet with the head of workmen's comp, of which there is no book on that, but which will come in primarily under safety, as far as I am concerned. He will probably meet with the workmen's compensation people at Great Lakes Steel. He will meet with Mr. Ecklund of the insurance department concerning insurance.

Then, in addition, he will meet with the Blue Cross and Blue Shield people to bring about, say, compliance with the agreement.

Also, in addition, he will talk to John Robinson or probably Bob Beerma on —

Q. Who are they?

A. They are involved in the pension department.

Q. For the company?

A. For the company, his counterpart, as far as the Local Union.

Q. Does he report on his activities to the Local Union?

A. Yes, sir.

Q. At the membership meeting?

A. Yes, sir. Then, in addition, he will write for, if he has, say a knotty problem he has run into, he may have a discussion with myself as an International representative, or he may write to Pittsburgh and ask for an interpretation from our pension and insurance offices, such as John Tomichael or Bernie Greenberg.

Q. Sometimes he writes to the legal department, too, Mr. Sadvery?

A. And the legal department, as far as the administrative. But he has his hands full.

Q. Now, what reports do you make at the membership meeting?

A. Well, one of the reasons that I am in the meeting, number one, I am a member of that Local and have been a member practically from its inception; and my duties is to see that the Local Union complies with the Constitution of United Steelworkers of America; and, in addition to the duties, the contracting party, being the International it is part of my responsibility to see that the contract is lived up to.

Now, there may be questions of interpretation arise from the floor that I am asked to interpret, a specific section of the contract, such as the seniority section 13, or Section 14, safety and health, Section 2, local working conditions, or even the management clause, Section 3. Those questions may arise from the floor pertaining to that agreement and it is my responsibility, because of the fact that I have been one of many individuals from that Local, officers, grievance committeemen, who have negotiated that agreement, it is my responsibility to interpret that agreement.

Now, in addition to that, it is my responsibility to process grievances that are in the third step of the grievance procedure that now has left the hands of the Local Union directly and come into the International step. I process those grievances, whether they be grievances concerning discharges, penalties, or whether they are on incentive or whether they are on hours of work or local working conditions or what have you, the whole agreement, including S. U. B. and insurance and what other problems may arise.

Q. Who processes the grievances up to the third step?

A. The Local Union grievance committeemen, which would be either the vice-chairman or chairman and many times even the President will sit in with them.

Now, on my level, I will normally have the chairman of the grievance committee that will sit with me and at times the President of the Local will come and sit and partake of the discussion.

Now, I am to report on these grievances, those that have been settled, those that have been granted, those that have been withdrawn and then those that may be going into arbitration. And if we have arbitrated cases, then I report to the general membership the results of an arbitration case and then lend emphasis to it or what the interpretation of that arbitration agreement is.

Q. Do you read or explain your interpretation of the decision?

A. I read and explain, right.

Q. Now, during this questioning which arises, is there division among the members as to the proper interpretation of a particular clause or section of the agreement?

A. There is very heated debates that occur on the floor because the plant being as broad as it is, one department may be applying, say, a portion of the contract a little different than some other one; and then the arguments start and there I may be called on to give an interpretation and then try to bring them into line. But there is heated discussion over application of the contracts.

Q. Now, from the Union standpoint, is there advantage or disadvantage to have everybody applying the contract the same way?

A. Well, the horse can't go two ways. He should be going one way. And this is what we stress, that there has to be uniformity in application of our agreements, whether they be the general contract or whether they be a local working condition that is applied under Section 2 of our agreement.

Q. Now, do you make any other kinds of reports, Mr. Sadvery, concerning the International?

A. Well, we may make reports on air pollution with attending seminars, different seminars, arbitration seminars, discussions with the various committees, whether it would be the E. C. C. O. or whether it would be the —

Q. You mean E. O. O. C.?

A. That's it, or the NAACP or different, even the Red Cross or United Foundation, those are — those things are

manifold, there are so many of them that have to be discussed because there is times in the discussion that a request may be for the Local to donate monies to these organizations to help them out.

Q. Now, Mr. Sadvery, do you from time to time receive interpretations from the International Office in Pittsburgh regarding the contract or any of its benefit agreements?

A. Oh, yes, yes, yes.

Q. What do you do with them?

A. Well, naturally, I try to study them and get the intent out of them that I can before I discuss with the officers and then into the general meetings so that we all understand what it is so that we can apply these new interpretations uniformly.

Q. Now, what about policy directives of the International?

THE COURT: Mr. Frankel, do you think it is necessary to go into specificity as it relates to each one of these? The court is familiar with the responsibilities of the various officers of locals.

MR. FRANKEL: Your honor, I am merely trying to show how much you learn at the Local Union meetings.

THE COURT: The court knows about the responsibilities of the field representatives. I know it is a responsibility which is momentous and very complex.

MR. FRANKEL: All right, your honor.

Q. Mr. Sadvery, over the years, has the Local Union ever had occasion to hold morning meetings for employees who work on the afternoon shift and could not attend the meetings by reason of working?

A. Yes, sir.

Q. How many times have you tried that over the years?

A. I would say that it was tried under at least three presidents.

* * * *

APPENDIX B

Excerpts from the testimony of Bernard Kleiman, Steelworker General Counsel, John Rooney, Assistant to Steelworker President, I. W. Abel, and Herbert J. Lahne, Director of Research of the Office of Labor Management Policy Development of the Labor Management Services Administration of the Department of Labor, in *Hodgson* v. *Local 5724, United Steelworkers of America,* Civil No. 68-30 (S.D. Ohio, filed November 22, 1972), *aff'd sub nom, Brennan* v. *Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973). Transcript of the proceedings before the district court, pages 6-13, 20-22, 24-40, 43-44, 47-54, 62-68, 76, 79-80, 91-92.

[6] BERNARD KLEIMAN

Called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COHEN:

Q. Mr. Kleiman, will you give us your full name, please?

A. Bernard Kleiman (spelling) K-l-e-i-m-a-n.

Q. Your address, please?

A. Home address?

Q. Both.

A. Home address is 1145 Braeburn (spelling) B-r-a-e-b-u-r-n Avenue, Flossmoor (spelling) F-l-o-s-s-m-o-o-r, Illinois. My office address is 10 South Lasalle Street, Chicago, Illinois.

Q. Are you employed by The United Steelworkers of America?

A. Yes.

Q. Could you tell us what position, please?

A. I am General Counsel of the Union.

Q. For how long a period of time have you held that position?

A. Since June of 1965; should be something over seven years.

Q. Prior to becoming General Counsel, did you, as a private practitioner, have any relationship, that is a lawyer-client relationship, with the United Steelworkers of America?

A. Yes. Prior to becoming General Counsel, I was District Counsel for District 31 of the United Steelworkers.

Q. For how long a period of time was that?

A. I was District Counsel from December of 1960 until I became General Counsel in June of 1965, and even prior to December of 1960 I was part of the firm that was the District Counsel of District 31.

Q. What is that relationship with the United Steelworkers of America?

A. That is the district that encompasses Chicago, Gary, and a few counties around Chicago, around Cook County, Illinois, and a few counties to the east of Gary, Indiana. It is really sort of a district around the southern tip of Lake Michigan.

Q. Mr. Kleiman, could you briefly describe for us your duties since becoming the General Counsel of the Steelworkers in 1965?

A. One of the General Counsel's functions would be, I suppose, to be the chief legal advisor for the officers of the International Union, and in addition as General Counsel I would basically supervise the Union's legal activities throughout the Union, which contemplates supervising litigation, advising the various people who work for the Union, the people in the International Headquarters, and the staff representatives and the directors, and advising the executive board in the various legal matters that arise, and directing the full-time legal personnel as well as sort of supervising the

various district counsel around the United States and in Canada.

Q. When you refer to the fact that you were the chief legal advisor for the International Officers, who comprise the International Officers of the Steelworkers' Union?

A. The three International Officers are the International President, Mr. Abel; the International Secretary-Treasurer, Mr. Walter Burke; the International Vice President, Mr. Joseph Malony. Then the International Office has an executive board. That's composed of 24 district directors from various geographical areas of the United States and Canada.

Q. As to that group, which includes the executive board and the three International Officers, are those all elected positions?

A. Those are all elected positions, yes.

Q. Elected by referendum vote?

A. Elected by referendum vote, yes.

Q. Mr. Kleiman, could you briefly describe for us, within the structure of the United Steelworkers of America, the relationship between the local unions and the international parent body?

A. The relationship?

Q. Yes.

A. The relationship was established fundamentally by the International Constitution. The International Union is the bargaining agent for all of the members, all of the million-plus members in the United Steelworkers of America, and it is the contracting body for all of these members. The International Union supplies various services for these members and for the local unions to which the various members belong as well.

The local unions are separate legal entities in law which have, however, substantial responsibilities and obligations under the constitution to the International Union and over which the International Union has certain control, and as

to which the International Union has certain regulations and requirements that all local unions must comply with.

Q. Approximately how many local unions are there?

A. Approximately 4,000.

Q. Am I correct in saying that the International Constitution and by-laws is applicable to each and every one of those local unions?

A. Yes.

Q. When you made reference to the fact that the International Union is the certified bargaining agent for collective bargaining purposes, what procedure is followed in terms of the establishment of local unions after this bargaining agency is set up as a matter of law?

A. An unorganized group of workers would be organized by the International Union, and the International Union would be certified as the bargaining agent. After that certification takes place, the International Union will establish and charter a local union or may put that group of individuals into an existing local union in somewhat rare circumstances, which that would be called an amalgamated local union, which would include workers in more than one bargaining union, but the typical situation would be that these unorganized workers would become part of a local union which is chartered, created by the International Union under terms that require contractually, constitutionally that the local union comply with these regulations that are applicable to all local unions.

Q. Once having been certified as a local union of the International, with respect to the procedures or requirements of the International Constitution concerning the nomination of local union officers and the election of local union officers, are these International Constitutional provisions applicable to each and every one of the local unions?

A. They are.

Q. Would you describe or could you describe for us whether or not you would consider the Steelworkers Organ-

ization a centralized one in terms of the relationship between the International and the local, or one in which a great deal of [autonomy] exists?

A. I would describe the relationship between the International Union and the Local Union as quite centralized. In terms of the International Union and in terms of my judgment and knowledge of other unions, it would be certainly more centralized than most, and certainly one of the more centralized.

Q. Earlier in your testimony, Mr. Kleiman, you made reference to the concept of the International Union providing certain services to the local unions that are chartered affiliates. Could you give us a brief description of the kinds of services that the International Union provides?

A. Yes. The International Union fundamentally, on sort of a day-by-day and constant basis, services local unions through staff personnel called staff representatives who are under the direction incidentally of these district directors that I mentioned earlier. The staff personnel, each staff man is assigned a number of local unions; perhaps five, six, seven, eight might be the average, depending on the size. In some cases a staff representative will have only one local union, if it is very large; or, if it is very large, there might be two staff representatives for one local union.

The staff representative really provides the day to day service that the International provides. The staff personnel are required to be at every local union meeting unless some exigency prevents that.

In addition the Internation Union provides a certain amount of legal service. It provides service in the specialized areas of bargaining and contract administrations, such as pensions, insurance.

The International establishes, through staff personnel, sometimes through legal personnel, procedures for arbitrating grievances that have arisen from its shop environment. The International Union has a Civil Rights Department

and therefore provides civil rights information, service civil rights expertise to the local unions.

Q. Let me just interrupt you to ask you this: When you are referring to the International providing these services, where are these people who provide this technical assistance located? Where do they work out of?

A. Most of the International departments are centralized in Pittsburgh, those principal departments being civil rights, pensions, insurance. There is a contract administration department that assists in bargaining generally and assists in handling of grievance arbitration.

There is an office and technical department that provides special expertise to office and technical bargaining units out of the Pittsburgh office. The International also has a newspaper that goes to each member of the Union, that is through a department that is headquartered in Pittsburgh, but has subdivisions in its regions, one in Chicago, one in Washington, one on the west coast, one in the south, but most of these International departments are headquartered in Pittsburgh.

As I indicated earlier, the real servicing is done by the staff personnel who are located out in the districts in the geographic areas where the members are located, and by and large these technical services are supplied to the staff which in turn provides on a one-to-one basis with the local union officers, and the local union members at the place of work.

Q. As to these staff representatives who you have described as being situated in districts located throughout the country, are these staff representatives employees of the International Union?

A. Yes. The staff representatives are full-time employees of the International Union.

Q. As a general rule, under the collective bargaining agreement between the Steelworkers and a variety of corporations, what function does the staff representative play in the grievance arbitration procedure?

A. In the grievance arbitration procedure, the staff [13]

* * * *

[20] less frequently than monthly as the case may be.

Q. (By Mr. Cohen) Could you give us an example of what you mean by a standing committee in a typical local union?

A. Under the Constitution, local unions are required to have certain committees. They are required to have a civil rights committee. They are required to have a Workmen's Compensation committee. Possibly others that don't occur to me.

Almost every local, in addition, has a safety committee. Almost every local has an incentive committee, if it has incentives. This is what you might call the industrial engineering committee, much more technical and complicated than the term might indicate.

Most of them have a welfare committee. Most of them have some kind of a political action committee. Most of them have a community services committee which gets to the relationship between the local union and the community, and then of course probably the most important committee of all in every local union is the grievance committee which deals really with the enforcement of the contract per se.

Q. Each of those committees are called upon on occasion or on a monthly basis in some instances to give some report?

A. That is correct. There are others too that just don't occur to me; yes.

Q. Based on your observation, are those committee chairmen, or whoever is making the report, available for questions from the general membership present at such a meeting?

A. Yes. I think a lot of the local unions, it is obligatory.

Q. Does the staff representative, who you have testified about previously, have a function or a role to play insofar as the local union membership meeting is concerned?

A. He does.

Q. What would that be?

A. As I indicated earlier, one of the job requirements of the staff representative is to attend every local union meeting, and the purpose of that attendance is to communicate what is happening with respect to the International Union, the Headquarters, to report on items of information that he has been asked to report on; to report on his activities obviously in servicing the local unions; that is his fourth step and arbitration handling; to report—the staff representative, incidentally, is also the chief negotiator in most local unions, so obviously it is a matter of great interest as to his report about the negotiations during collective bargaining time—and he is also there to hear, as part of the whole internal communication system, what the local union membership is thinking, and to communicate that back to his superiors and to have sort of a flow and interchange of information.

So, he is a communicator; he is also sort of a technical—the month-to-month technical expert, because he should know more about—and normally knows more about the various technical aspects of the collective bargaining relationship than any individual member of the bargaining units.

Q. When you refer to the rank and file communicating with the staff representative, are you talking essentially of International Union matters that they are concerned about?

A. Yes. As a matter of fact as the Constitution indicates there is a place on the agenda for, I think it is stated as the report of the organizer, but it's the organizer, the staff representative, and there is a place calling for his report.

Q. I take it, Mr. Kleiman, that you have not personally

attended meetings at each and every one of the 4,000 local unions within the United Steelworkers?

A. That is correct.

Q. So you are not in a position, I take it, to testify as to what happens on the regular basis at each and every one of these locals; is that right?

A. That is correct.

Q. Your testimony here is based on what your experiences [22]

* * * *

[24] union ones, are probably run much more on an individual basis. One man really does a lot more of the functions than would be the case in a very large local union.

THE COURT: Mr. Cohen, may I ask a question at this point, please?

MR. COHEN: Yes, sir, surely.

THE COURT: Mr. Kleiman, is it a policy of the International, or perhaps a practice of all the locals, to involve as many members on committee assignments as possible?

THE WITNESS: It certainly is the desire of the International Union that this be done, and it is certainly one of the things that is a real goal I think of the Union. The extent to which this is the practice is of course limited by my personal observations, but in terms of those situations I know about, the effort very much is to increase this involvement, and indeed we have done some things even quite recently rather interesting in that regard, I think, that increases this involvement.

THE COURT: Go ahead.

Q. (By Mr. Cohen) Turning your attention away from that subject area for a moment, Mr. Kleiman, you have testified previously that the International Constitution is uniformly applicable to each of the local unions. Insofar as that International Constitution is concerned, could you tell

us what are the constitutional requirements for eligibility to run for and hold office as a local union officer within the Steelworkers?

A. Yes, I could.

Q. What are they?

A. The constitutional requirements are that the candidate must have been in good standing for a period of two years immediately preceding the election, and must have attended one-half of the regular meetings held by the local union during this 36-month period preceding the election with a couple of provisions for exception to that attendance requirement.

Q. What are the,

A. The exceptions are that an individual is deemed to have attended a meeting if he is prevented from attending the meeting by his working hours or by the actual conduct of union business.

Q. Insofar as the first requirement is concerned you testified about, the 24-months in good standing, is that a continuous period that is required of good standing?

A. That is 24 continuous months in good standing, yes.

Q. Subsequent to the election of local union officers in June of 1967, do you recall any situation arising in which your office was advised that the secretary's office was contemplating filing lawsuits challenging the reasonableness of the union's meeting attendance requirements?

A. I do.

Q. Can you tell us about when that took place?

A. I really don't recall. I think it was, let's see, the elections would have been in June of 1967. I think that later, towards the end of 1967, we received a number of letters from the Department of Labor indicating an intention to file suit in a number of situations, but I can't place it closer than that.

Q. When you say a number of situations, are you talking about a number of local union elections?

A. Right.

Q. Upon being so advised as to this possibility, what, if anything, concerned you in your capacity as the General Counsel?

A. The letters indicated that the fundamental concern of the Department of Labor was the attendance requirements that I have just mentioned, and it was rather clear from this that the Department of Labor was thinking about challenging the attendance requirement. Incidentally, we were somewhat aware of a previous concern, because as I recall there was one situation that was still existent from the 1964 elections. I wasn't General Counsel during the 1964 general elections, but after I became General Counsel, there was still one case outstanding in which the Department of Labor had considered, in roughly 1965 or 1966, filing suit, so my concern was that I was aware by reason of these two circumstances that the principal concern of the Labor Department seemed to be this attendance requirement.

Q. Was there any concern on your part as to the application of the constitution to each of the local unions that are involved?

A. Well, that was what was of concern because this, insofar as I was concerned, and insofar as the International officers and other people in a policy position in the Union were concerned, the attendance requirements are quite a meaningful thing to what we consider to be the whole thrust and philosophy and significance of the Union. This becomes all the more the case because of our fundamental program of having the same requirements for all of the local unions, and one of the obvious concerns was whether the Department of Labor's concern was simply related to the dozen or so local unions that were involved in these letters, or whether their concern related to the operation of the rules for all of the local unions.

It would be of great concern to the International Union to have, at that point, had the attendance requirements attacked legally. It would be of even more concern, also of

considerable concern, if the attack were directed towards having different rules for different local unions, because that would impose an impossible administrative problem.

Q. In light of this concern, did there come a time that you requested a meeting with officials from the Secretary of Labor's office?

A. There did.

Q. Do you recall whether or not such a meeting took place?

A. Such a meeting did take place.

Q. Can you tell us roughly when that took place and where, if you know?

A. I believe that it was late in 1967, or early in 1968. It took place in Washington, in the offices of the branch of the Labor Department that, as I recall, administer—certainly, we will say, it was in the offices of the Department of Labor.

Q. Were you present at that meeting?

A. I was present at that meeting.

Q. Who was present, to the best that you can recollect, from the Secretary of Labor's office?

A. I recall quite a number of people being on the other side of the table. I can remember specifically Mr. Donahue, who was, I guess, an assistant—would it be an assistant Secretary of Labor?—in charge of this aspect of the Labor Department's activities, and a Mr. Henry Queen, who I had known previously who functioned in this area, and there were others.

Q. Who was there on behalf of the Steelworkers, do you recall, in addition to yourself?

A. In addition to myself there was Associate General-Counsel; Wynn Newman; I believe that one of our District Directors was there, at least for part of the meeting, a District Director of a district in which one of the cases arose. I am not positive about that. I am not sure who else was there on our behalf.

Q. Mr. Kleiman, before asking you to describe what

transpired at that meeting, could you tell us what steps, if any, you took in advance of that meeting to ascertain what position the International Union would take with respect to a possible lawsuit in these circumstances?

A. Yes.

Q. What steps did you take?

A. If I may go back for just a moment, my recollection is that in late 1965, or early 1966, the Labor Department, in a case arising from the 1964 elections—and I recall it as being a can local, a local in the can industry from I think New Jersey—the Labor Department had indicated then some concern in investigating a complaint arising from that election about our eligibility rules. We had defended those eligibility rules at fairly high levels in the Department of Labor. I can't tell you precisely with whom, but there had been a dialogue.

I thought that we had convinced the Department of Labor in that situation that the rules were reasonable, which is the word that the statute uses. The reason I thought that is that after we made this fairly high level presentation, they decided not to proceed to suit, so when these several letters came forth in 1967, it was a bit of ā shock. As I had done previously, shortly after I became General Counsel in this one can local situation, I had done this before; I sat down with the officers and some of their principal advisors, and we again discussed this question and, you know, of course discussed the Department of Labor's interest, apparent interest, in doing something about this role, and discussed our own policy and view about the eligibility rules.

Q. Were any decisions made as a result of this review which was conducted between yourself and the International officers as to what course of action to pursue?

A. The decision was that we should defend the suit; that we should defend them because the rules seemed to us to be too important to abandon. Obviously the alternatives were to defend, try to convince the Department of Labor

not to proceed. If we couldn't do that, to defend or to drop the rules or restrict the rules, to make the rules somewhat looser.

The feeling was, on the part of the International officers and their advisors, and it was unanimous, that we should not abandon these rules.

Q. What was that position predicated on?

A. The fact that the rules served various purposes that were worthwhile insofar as the Union was concerned, and which probably were the reasons they were developed. I say probably because I wasn't around when the rules were originally promulgated, but certainly this is what I understood to be their purpose.

Q. Am I correct in saying though that what essentially happened was a decision was made to attempt to retain those rules?

A. Exactly.

Q. In the existing form as they were under the 1966 Constitution?

A. That is correct.

Q. What purposes in the eyes of the officers and yourself did that meeting attendance rule in fact serve?

A. Several purposes, one being that there is a desire to have maximum attendance at local unions. This has obviously been a matter of concern to the labor movement and to people interested in the labor movement; the fact that attendance at local union meetings is not as good as we would like to have it be, and that there is a good bit more apathy than we would like.

One of the purposes of having a meeting attendance requirement is to encourage the people to come and certainly to at least require those people who want to say something or do something about the directions of the Union—that is those who are not happy with the local union leadership—we would like them to be there to have the kind of dialogue that you have in a democratic organization between those

that are running the local union and those who have input with respect to it.

The attendance at local unions is quite variable; however, we think it is valuable even at those local unions where it has not given rise to the kind of attendance that one would like to see because at least it insures that those who have problems, those who are in opposition to the local union leadership, will come in order to keep ripe their right to run against the local union leadership.

We think this is important too in order that the local union leadership is not permitted to function as sort of a one-party system unaccountable to anyone. We think it is important that those people get there. We certainly know that it has had that effect, even where it hasn't had the effect of creating a great deal of attendance.

It's gotten the opposition in. The reason we know that is because there is openly just a great deal of opposition at every local union election within the Steelworkers.

The second reason, another reason, is that the job of being a local union officer is much more complicated than I think one would imagine. If one takes a look at our collective bargaining agreements, I think you can't help but be surprised at the complexity of our programs and the complexity of the obligations that are imposed on local union officers in administering the contract. This is aside from the other things that local union officers have to do.

It is terribly important, therefore, that local union candidates and local union officers have had exposure to these programs; have had the maximum of educational opportunities and what-have-you, and certainly one of the places and perhaps the best place to get that kind of exposure, and in some cases maybe the only place to get that kind of exposure, is at local union meetings, and hopefully the meeting attendance requirements would serve that purpose.

Finally, and I think this is very important, I think that because of the importance of the local union operations to the

whole Union, and indeed to the whole labor movement, it is very important that people be running local unions who have a demonstrated interest in the thing.

Q. In this connection, let me just interrupt to ask you this question: In this connection, in terms of the demonstrated interest, was any consideration given by the officers who were making this judgment as to the imposition that would be imposed on a member for having to satisfy our meeting attendance requirement?

A. Yes. The matter of whether the requirements are so onerous that they put an undue burden on one in determining one's interest in the Union's affairs, has been considered, but what it really amounts to is that the average local union meeting runs a couple of hours once a month. All that is required at most in the normal situation is that an individual attend 18 meetings. That would be half of 36, assuming there is a meeting held every month, so the individual is asked to devote, I suppose, 36 hours over a three-year period to the Union, which seems to me, you know—and I think seems to the officers and to the officialdom of the Union—not to be at all an undue requirement, the alternative being that if you have a lesser role or no role, one can become very much turned on just before an election.

THE COURT: Mr. Kleiman, based upon the exchange that the officers of the International had with the officials of the Department of Labor at the meeting you spoke of, which I believe took place late in 1965 or early in 1966 in Washington---

MR. COHEN: Late '67 or early '68—

THE COURT: —what impression, if any, did you gain from your discussions with the Department of Labor as to whether or not the requirement for attending half of the meetings was too high, or whether there should be an attendance requirement at all in the Constitution, in the local rules? Did the Department of Labor say or take the position

that attendance at half of the meetings was too onerous; it should be 40 percent, 30 percent, 20 percent, or no percent?

THE WITNESS: I distinctly received the impression, and I think more than the impression at this meeting, that the Department of Labor had no objection to a meeting attendance requirement, and that its problem was, and that there was some doubt in the minds, because we sort of raised the question of "Well, you know, if you accept the premise of a meeting attendance requirement as they did, then where do you draw the line?"

That line was not defined, but it was clearly a question of where you draw the line, not whether you should or should not have a requirement and I received the distinct impression that they understood and agreed, and at least some of the discussants agreed with the concepts and the purposes of a meeting attendance requirement.

THE COURT: So that the Labor Department people didn't indicate that on attendance they felt that 18 was too many in a three-year period?

THE WITNESS: That is correct.

THE COURT: But they didn't say whether 16 would be too many, or 14, or 12, or 10, or 8, or anything like that?

THE WITNESS: They did indicate that—this reminds me—half of two years would not be objectionable.

MR. COHEN: If I might interject, Your Honor, Exhibit T to the Supplemental Agreement contains excerpts from what is called the Interpretative Manual, which the Labor Department issues as sort of a general guideline, and in that document, which is in evidence, two things are reflected: One that in fact the Secretary did recognize the relationship between the meeting attendance rule and qualifications to hold office, and further did point out that absent some extraordinary circumstances, like the inability of getting from the plant to a local union meeting, but except for that type

of circumstance, a two-year rule which would require attending one-half of the regular monthly meetings over a two-year period was, on its face a reasonable rule, and that is part and parcel of the case.

Are you through, Your Honor?

THE COURT: Yes. Go ahead.

Q. (By Mr. Cohen) Following up Your Honor's question: Do you recall, Mr. Kleiman, whether any discusion took place between yourself and any representative of the Secretary's Office concerning what impact, if any, the Secretary's Office felt there was, the difference between the two-year rule and the three-year rule in terms of the numbers of people who would actually qualify?

A. I am virtually sure we indicated at this meeting—I remember this general discussion—that we felt that the three-year rule really was no less restrictive. We had a distinct feeling that—I am not sure that either of us had statistics really—but we were talking about this problem. We felt that those who attend, are attending, and they are not going to just say, "Okay now, a year has passed, now I have got to start going to meetings," that they are going because of an interest, and we allege that we didn't think there would be very much difference at all, and I don't think they seriously argued with that. I don't remember them seriously doing it.

In any event there were no statistics.

Q. Let me interrupt and ask you this: Was there any effort made, either at that meeting or subsequent to that meeting, by the Secretary's Office to demonstrate that the Steelworkers, by an analysis of statistics, that in fact the difference would have resulted had the year been a two-year rule rather than a three-year rule?

A. No. They made no such effort. I am inclined to think —I know we did a certain amount of looking at some of our cases to see whether there was any serious difference. Of course that isn't really entirely valid in our case, because

there is a three-year requirement, so the first year shouldn't necessarily be that much difference than the second or third year, but we could see no indication from our own statistics, and they never presented anything to us that would support a theory that more people would be eligible under a two-year rule than a three-year rule, nor did they respond to our question which was, "What do you do about participation during the first year?"

"Do you just say that the incumbents can function without benefit of some inducement for the opposition to come and for them to watch what the incumbents were doing?" There was no response to that either.

Q. Turning your attention for a moment back to your prior testimony in which you were explaining how one of the purposes designed by the rule was to enhance the working hours of the individual members' activities in the Union, in your judgment, since you have become the General Counsel, from 1965 on would you say there has been an increase in complexity attendant to holding local union offices?

A. I would say there has been, and very much so.

Q. Could you elaborate on that a little bit, please?

A. Well, Title VII of the Civil Rights Act came into effect, became effective in July of 1965, as a matter of fact. Clearly that imposed new and additional obligations on local union officers, because in the case of the Steelworkers, became very much involved in our seniority systems. We have a number of considerable legal implications that are currently still applicable.

In addition to this, in a lot of our jurisdiction, the question of imports has become very much a problem, which in turn has opened up for local union attention the question of productivity. One of the things we did in our last session was agree on local union productivity committees where the local union officers deal with the top management at each plant about ways of doing something about productivity to

keep American steel and American products of other kinds competitive. This import thing is a problem.

Finally, the three things that occur to me immediately are the whole matter of the Economic Stabilization Program, Phases 1 and 2 imposed tremendous burdens on the local union officers and on lawyers too, I might say, because it is extremely difficult to keep on top of what one can do in the bargaining arena with an Economic Stabilization Program.

Q. What impact, if any, in your judgment has, for example, the enactment of the Landrum-Griffin statute had insofar as the need to be able to cope with these problems is concerned?

A. The Landrum-Griffin Act imposes obviously a number of obligations on union officials with which they must comply, including fiduciary obligations that were not at least codified prior to Landrum-Griffin, and it has had the effect —I am not sure whether it's really Landrum and Griffin— but certainly since the passage of Landrum-Griffin, there is a whole new area of labor law called unfair representation which has developed, and there just probably is no local union that isn't subjected by an unhappy grievant, or many unhappy grievants, to threats, and in many cases claims of unfair representation. The Supreme Court has acted on this matter since passage of Landrum-Griffin—in fact in the past few years Vaca versus Sipes being the lead Supreme Court case—so there is really sort of now developing a legal code of representation of members. This obviously increases the obligation of officers, and certainly imposes burdens on them that they did not have in the old days.

Q. Could you tell us, Mr. Kleiman, since you have become General Counsel in 1965, whether or not one of the basic principles or philosophies of the Steelworkers' Union has been to afford increasing responsibility to its local union officers at the local union level?

A. It very much has been.

Q. Could you tell us to what extent, for example, the procedure for expedited arbitration illustrates this particular principle?

A. I think that's the best example of the direction that the International Union of the United Steelworkers of America has gone in expanding local union participation and giving additional burdens to local union officers.

In the first place we were confronted all through the 60's with an increasing amount of internal plant disturbances, wildcat strikes, slow-downs, just terrible [40]

* * * *

[43] Incidentally, it costs $35 a case rather than $500 a case.

Q. When you refer to the fact that local union people were presenting those cases in arbitration, is that essentially the grievance committeemen and local union officers; is that who that would be normally?

A. It would normally be one of the elected officers, although I suppose in some locals, if there is a very bright young guy he might be the presenter. Actually we are urging the local unions to sort of divide it up as an educational thing among the local union officers, and we have been engaging in some educational process perhaps on the part of the International helping the local unions feel comfortable about presenting these cases to an arbitrator.

Q. Turning your attention for a moment, Mr. Kleiman, back to the time that you and the officers and advisors were discussing what course of action you were to take with respect to the possibility of this litigation, was there any discussion concerning whether or not, in your combined judgment, such things as discussions between the employees at the work place or between local union officers and rank and file members at the work place would furnish an adequate substitute to participation and attendance at local union meetings?

A. We did discuss this.

Q. What conclusion, if any, did you come to?

A. Well, the feeling was that that wasn't a substitute for going to local union meetings, and you know, communing with the staff representative and with the other technical people who from time to time go to local union meetings. The feeling was too that—incidentally this arose because the Department of Labor has sort of had the theory that one learns from being in the work place, and certainly it is helpful to be in the work place; it is advantageous—but basically the work place is not a discussion group.

The employer expects the worker to be there to work, and in most places I think the worker doesn't have time to stand around discussing the union affairs and the affairs of the local community. He is there to work.

Q. Let's turn for a second to the manner in which the Constitutional provision concerning the meeting attendance rule operates. Am I not correct in saying, Mr. Kleiman, that there can be circumstances where, by virtue of the working hours conflict exception, a particular member or members who attended none or very few meetings would nonetheless be eligible to run for and hold local union office?

A. It would be possible for a member to become eligible without attending any meetings because of the exception, yes.

Q. Isn't it true that that kind of a result would seem to act at cross purposes with the concept of needing to acquire some familiarity with union affairs through a local union [44]

* * * *

[47] meetings, combined, could end up qualifying the person?

A. Yes. I think the incidence of people being qualified for some meetings, being qualified by reason of a combination of meetings and work, would be quite a percentage of that, I should think.

Q. Mr. Kleiman, since the Secretary filed the series of lawsuits which have challenged the reasonableness of the meeting attendance rule, have you had occasion to analyze

the trend within the Steelworkers' Union concerning the extent to which there is competition for local union offices?

A. I am aware, I think, yes, as an active person of the degree you know, and general terms of the degree of opposition in the local union elections, yes.

Q. Could you tell us in general terms what that has been in your experience?

A. I think it's very great. I was just thinking last night that either in the '64 or 1967 elections in District 31, which is the district I originally came from and live in, there are 130,000 members and about 225 local unions. Either the '64 or '67 elections there was one local union President of those locals which had over a thousand members who was not defeated. In other words, only one local union President of the locals over a thousand members succeeded himself, and that's a lot of locals, 130,000 members and 225 locals. A very large percentage of the locals are over 1,000 members. I just don't think there are any large locals, and of course you are not as much aware of the smaller locals, but I don't think there are any large locals where there is not opposition for all of the significant spots, and virtually all of the spots, but the significant spots are the top five offices.

Q. What would they be, in your judgment?

A. President, Vice President, Recording Secretary, Financial Secretary, and Treasurer; but, in fact, in the big locals this is just to stress there is opposition for all of the spots, and the only situation where there isn't in small locals, is where you just have a very satisfied situation, you know; some guy is sort of the mother hen President in the small local, and some people are happy with him. When they aren't, he gets opposition.

Q. In addition to looking at the question of challenges, competition for the respective top offices, have you had occasion to attempt to analyze the question of whether or not incumbent local union officers are being returned to their prior office term after a term in the Steelworkers' Union?

A. During all the time that I have been District Counsel or General Counsel, there has been a great deal of very large numbers of incumbents being defeated. You can observe this in steel, for example, in each negotiation, because the local union Presidents, in basic steel which are several hundred local unions, very close to about 700 local unions right there, compose the industry conference, and that's also true of our other big industries, so we really see these Presidents quite frequently as representatives or delegates to the industry conferences, and their composition keeps changing, keeps getting incidentally younger and younger, and the old faces just sort of disappear every three years.

Q. When you testified previously about what are generally considered the five top officers within the local union, are there in addition, certain offices which are not always covered by the Landrum-Griffin Act, which in your judgment also comprise a significant office-holding position with the local union?

A. Yes. I guess offices isn't really quite the right word, because office has a significance in the law, but they are very important elected positions, and the grievance committeemen, particularly in the big local unions, the big plants, big steel mills, the grievance committeemen are very important offices, because they really administer the contract.

Q. Have you had occasion to look at the situation with respect to the election of grievance committeemen to ascertain whether or not there has been competition within those particular positions?

A. There is tremendous competition for those positions.

Q. Has it been commonly your experience?

A. Incidentally, the eligibility rules apply to those positions too.

Q. Are those positions, in your experience, such that quite frequently they are spring boards to higher local and/or International staff representative positions?

A. Very much so.

Q. Why would that be?

A. It's just because after all the basic work of the union is bargaining and administering the contract, and the grievance committeemen are in some ways really the technicians or their assistants, the guys that help them. The grievance committeemen, in a big steel mill, will have a whole quantum of people working for him called assistant committeemen, or stewards, or whatever they happen to call him at the particular location, and these jobs are all jobs where one distinguishes them in performing the work of the Union.

Q. What is their exposure to the rank and file in terms of accessibility during their period of time?

A. They service the rank and file. Those of us who work for the International see the rank and file, you know, sporadically, but these people live with and really do the work of the Union.

Q. One final question, Mr. Kleiman: In looking at the 24-month continuous good standing requirement of the Constitution, could you tell us whether or not there is any overlapping purpose between that requirement and the 36-month meeting attendance requirement?

A. So far as I am concerned, these two requirements serve different purposes. One is to fundamentally see that an individual has had at least two years in the work place, that is the 24-month good standing, and if he has been there that long, that he has kept up with his dues obligations and what-have-you during that period, but that is, I think, you know fundamentally to see that one has met his sort of legal obligations and the other is to serve these more functional purposes that I have talked about earlier.

MR. COHEN: I have no further questions, Your Honor.

THE COURT: I would like to ask one question before we recess, before cross-examination, if there is any:

Mr. Kleiman, do you know if the challenge of the Secre-

tary—I take it you used the term Secretary to designate the Department of Labor?

MR. COHEN: Yes, Your Honor.

THE COURT: —do you know if the challenge from the Secretary to the attendance requirement of one-half the meetings over a 36-month period is based upon any empirical study done by the Department of Labor which indicates that a very small percentage or a relatively small percentage of the membership of a local only attends the meetings, or that there has been a self-perpetuation of local officers?

Perhaps what I am asking you is: What hard information, with respect to the attendance record at local unions or the self-perpetuation of officers, has prompted the Secretary to challenge this attendance requirement?

THE WITNESS: I am aware of no hard evidence they have. I am unaware of them having even asked for this information other than, of course, they have studied it in the individual cases that they have pursued against us in various jurisdictions, but I am unaware that they have made any effort to study the Union generally, you know, the 4,000 or any significant percentage of the 4,000 local unions to determine its impact, and I am also unaware that they have ever really talked to our people about this problem.

THE COURT: Since this challenge has arisen, has the Union, the International itself, made any study of attendance?

THE WITNESS: We have made some. We have obviously watched it very closely to sort of verify or try to verify or approve or disapprove our reaction that the rule served a purpose, because we have no interest in the rule except as it serves this purpose. We who work for the International are defending the rule, but because we think it serves purposes for our members and for the Union.

We did do a study resulting from the '67 elections. Mr.

Cohen may recall this better than I. It was as a result of those certain matters that came to the attention of the Executive Board to determine basic involvement and the extent to which individuals were and were not perpetuating themselves.

MR. COHEN: I perhaps could cast some light on that, if Your Honor would like, although I will say it in an advocate's role, not as a witness. I think Mr. Lahne at least was present when this occurred, and would attest to the validity of what I am saying.

At the original trial, Your Honor, in the Local Union 67-99 case, which was tried before the Southern District of California, before Judge Crarey, the Union prepared and sought to have the Court receive in evidence an exhibit which was designed to show and which showed that with respect to each of the approximately eight local unions that the Secretary was suing because of the meeting attendance rule, that with respect to each and every one of those locals, the five key officers which Mr. Kleiman has testified to; President, Vice President, Recording Secretary, Financial Secretary and Treasurer, there was in fact substantial competition which resulted in a major reshuffling of offices. The Secretary of Labor at the trial, through The United States Attorney, objected to the receipt in evidence of that document which was marked and he did so based on what ultimately became a stipulation entered into that record which was acceptable to my partner, Mr. Gottesman, who was the trial counsel for the Steelworkers that day, and the Secretary said, "We are not challenging the question of whether or not your rule operates to perpetuate incumbents; that we do not think is the touch stone of the legal standard, but we will acknowledge that in fact it does not at least insofar as these situations are concerned, and if I might be permitted to speak on behalf of the Secretary, because I believe I have lived through this long enough to know what his position

was in that regard, I believe he said it was the effect question, let's look to see how many people are disqualified.

THE COURT: Let's save that for later.

THE WITNESS: Judge, one thing occurs to me. I remember a little more what the study was, if you would care for me to elaborate on what we did.

THE COURT: Yes.

THE WITNESS: It was after the '67 elections, and at the point at which we became—we were sort of interested in what had happened anyhow—then we also became aware that the Department of Labor was concerned about this eligibility thing. I think we figured that we had 3700 local union elections in '67, in the 3700's. There is a procedure for appeal which is very much used within the organization, and everyone is very much aware that goes to the Executive [54]

* * * *

[62] [CROSS EXAMINATION]

employees do you believe attend union meetings if there is not something like an appearance by yourself or a wildcat?

A. In terms of myself, I can't be certain because I have described my experience, so I really don't know what happens at a more mundane meeting in terms of attendance, in terms of percentage of attendance.

Q. Is there any reason to believe that a person who attends a meeting would be more familiar with the union problems than someone who learns about the problems from a steward or through the grapevine in a factory?

A. Absolutely, there would be reason.

Q. Has there ever been any study to determine whether or not that is true?

A. I can tell you what my own studies indicate. My own

studies indicate that the average worker has very little communication in the plant. Representing, say, an injured worker or representing a grievant, he will sit down to prepare the case with him. He will say, "Okay, who observed this?"

By and large the worker in the plant doesn't even know the full name of the guy that works next to him, and I found this amazing when I first encountered it. He knows him by a nickname; he doesn't know where he lives; he doesn't know anything about him except he knows what he calls him, which is very frequently not his real name. It is just a nickname that they use.

I really didn't understand that. I now am beginning to realize the obvious reason is that they don't have time to sit around discussing their private lives or anything else, so I am convinced there just isn't any real work place discussion of these union affairs with which my testimony is concerned, and with which the interest is concerned.

I am pretty well convinced that the only regular constitutional communication device is meetings, and then of course we do tend to go beyond meetings by having educational programs beyond the meetings, but the meetings are the starting point of the communication, and I don't think it can come from the floor.

I think the base, the average worker is very anxious to get in there, and very anxious to get out of there, and if you are around a plant gate at say, starting time or closing time, or a time clock, you will see that. They just don't tarry to discuss the union's affairs or anything else.

Q. Would you say that the average worker does not know his union steward and does not communicate with him?

A. No. I think the average worker knows his union steward, but he communicates with him, you know, when he has a problem. In fact he has to get permission to communicate with him in the average plant. You can't talk to anybody, you know, who isn't the guy you have to talk to in your work

unless you get the permission of your supervisor to talk with him.

The union steward is a very harrassed guy who represents several hundred people possibly, and he is being pursued by one fellow after another with a problem, so they don't really have time to sit around philosophizing about the union. They are dealing with the individual worker's individual immediate job.

Q. Are you aware that in 1956, President McDonald, who was President of the Steelworkers, stated that he thought the whole business of attendance requirement should be restudied by the Union?

A. I am not aware of that, no. I am not aware of that.

Q. Do you know if any study was performed on attendance requirements after '56, or before?

A. The only studies—and we are again dealing with that term—that I am aware of were those that I described.

Q. Are you aware of attendance in other unions? By that I mean personal knowledge of employees who may attend a union meeting?

A. I am not as aware—I am aware of no union of an international nature, you know, where the attendance applies to 4,000 unions. I am aware, by reason of my law practice, or previous law practice, of individual local unions, of other international unions, and you know, sort of what the attendance is at some of the meetings I have attended for other local union clients, but I am not aware on an international basis of any union other than the Steelworkers.

Q. Let's take one of those local unions which does not have an attendance requirement and compare it with the Steelworkers, a Steelworkers Local which does have an attendance requirement. Could you compare the two and tell us if there is much difference, if any?

A. I think most of the locals I am aware of have an attendance requirement or inducement of some kind. Some, for example, will rebate some money, you know, or something like that or give some kind of an inducement or something like that. I think most of the locals that I have dealt with probably have some kind of an attendance thing, so I am not sure I can really comment very well on the local that doesn't.

As I sit here, one that doesn't doesn't really come to my mind.

Q. Does the fact that the Steelworkers' unions require attendance mean that they have better attendance?

A. I really don't know. I really don't know the answer to that. I would hope it does, but I really don't know.

Q. You mentioned inducements. Do some of these inducements work better than others?

A. I don't know. I would like to think, and I have thought about this, and this is purely my opinion, that the attendance eligibility requirement is the best one and that it works better because I am convinced that there are more local union election contests and there is greater competition for local union office in the Steelworkers, than in other unions I know of. I know of many other locals in the Chicago area where the leadership has just sustained itself since long before I became a labor lawyer, and that is not true in the Steelworkers in the Chicago area for example, at all. There is much greater contest, and there is much greater incidence of incumbents being defeated in the Steelworkers than in any of the other locals that I know of or have dealt with, I think.

Q. Could you tell us what locals you are speaking of? Be a little more specific.

A. Oh, for example, I think the first client I ever had was Local 512 of the Transport Workers Union, which represents the mechanics at American Airlines, and in Chicago and in several midwestern cities, it is one of three big locals that has a geographical area. The fellow who was the President there was the President before I became a labor lawyer

and resigned just last year, chose not to run again. He is going to run again next term, and he is going to be elected.

We represent the Bakeryworkers, the new Bakeryworkers. They didn't even change Presidents when they left the B&C, when the B&C was expelled, and they went with the cleanup Bakeryworkers. The same President has been in office all of that time.

We represent Oilworker locals in the Chicago area, our office does, and basically they have had the same leadership.

Our office represents the Typographical Union. This is a very interesting system. They have a party system. They always have had a party system, and all the locals and International are very much like the Democratic and Republican Party, but you just have competition between the two parties really. You don't get a large number of people contesting for office. You get more people contesting for office under our system than you do under a party system, although our big locals do have sort of a party system.

Q. Mr. Kleiman, are you aware of any local at all that does not have an inducement or a participation requirement?

A. I am sure that I am but as I sit here I couldn't say Local so and so does not. I can think of some locals that do have inducements. I can't, as I sit here, precisely think of some that don't.

I think the Oilworkers locals don't.

Q. Knowing for sometime that the issue of participation was going to come up, did you ever take a look at a union which did not have inducements or required participation and compare it to a Steelworkers local as to whether or not they have more or a higher percentage of people turning out at their meetings, or the same?

A. Normally, no. Normally, no.

Q. So you don't know one way or the other which would have the best turnout, percentage-wise?

A. No, just the reactions that I have told you, they were

personal reactions that I have mentioned earlier, but I can't prove those personal reactions statistically as I sit here.

Q. You were saying that there are certain agents, I believe, who work with the locals, union locals?

A. Staff representatives.

Q. Don't these staff representatives educate the officers in the locals as to their duties?

A. Yes, surely.

Q. So wouldn't it be possible for someone who had never attended a local, even if it was because he worked nights and was unable to attend the meetings, to learn from a staff representative exactly what his job would consist of and be able to perform it?

A. Oh, sure it would be possible, and I am sure that [68]

* * * *

[76] JOHN ROONEY

Called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

by Mr. Cohen:

Q. Mr. Rooney, would you give us your full name and the spelling, please, for the record?

A. John R. Rooney (spelling) R-o-o-n-e-y.

Q. Where do you live, Mr. Rooney?

A. My home address is 811 Alden (spelling) A-l-d-e-n Drive, Pittsburgh. My office address is 1500 Commonwealth Building, Pittsburgh.

Q. Is that the address of the International Union Headquarters that's been referred to?

A. That is the International Headquarters, yes.

Q. Are you employed by the International Union, sir?

A. I am.

Q. Could you tell us in what capacity you are employed?

A. I am Administrative Assistant to the International President.

Q. Mr. Abel?

A. Mr. Abel.

Q. For approximately how long have you held that position, sir?

A. I have been his Administrative Assistant for almost [76]

* * * *

[79] reading of those resolutions, the basic nature of such requests coming in from the local unions?

A. The overwhelming number of them, percentagewise, asks that the meeting attendance requirement be made even more stringent than currently, particularly they seek to have us change so as to not give meeting attendance credit for working hours or union activities, particularly working hours.

Q. These, I take it, are resolutions that come to the Headquarters from any one of the 4,000 or so local unions within your jurisdiction?

A. That is correct.

Q. You have been present in this hearing room during the testimony of Mr. Kleiman; is that correct, Mr. Rooney?

A. Yes.

Q. Without asking you to repeat or asking you the same questions that we directed to Mr. Kleiman, can you tell us whether or not, in your capacity as Administrative Assistant, you have been privy through these years to discussions with the International officers concerning any possible modification of the meeting attendance rule?

A. I have.

Q. Could you tell us as to your understanding of the basic philosophy which the Steelworkers Union or the officers has pursued during these years?

MR. BRINSFIELD: Your Honor, I will object to that as hearsay.

THE COURT: Overruled.

A. The basic philosophy has been that we want to be, and we hope we are, a responsible union. By responsible union I mean one that believes in the sanctity of contracts. We may not be pleased with the contract which we eventually have to sign, but once it is signed we believe it should be lived up to.

We believe that that can best be done if you have responsible local union officers, and we think that local union officers become responsible only through education, and by education I mean through knowing the problems of the Union, the local union, attending its meetings, and gradually becoming committed to the idea also that they must be responsible.

Q. Through the years have you had occasion to attend local union meetings, Mr. Rooney?

A. Many of them.

Q. Once again, without asking you to go through all the questions I asked Mr. Kleiman, would you say that his testimony accurately reflects your observations as to what happened at local union meetings?

A. Yes, I would.

MR. COHEN: I have no further [80]

* * * *

[91] Q. (By Mr. Cohen) Directing your attention to a prior section, Section 422.206, and I read to you as follows:

"A provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office is not unreasonable if it is applied fairly and uniformly to all members."

Are you aware of that provision of the manual, sir?

A. I have read it since the stipulation.

Q. With this particular provision that I have just read you in mind, would you agree with me that the 12-month

or the 24-month meeting attendance rule reflects the Secretary's recognition that in fact the meeting attendance rule is designed in certain circumstances to show that the candidates have the qualifications to hold office?

A. I will only agree that what is stated there is the opinion of the Secretary. I will not interpret it.

Q. Are you employed by the Labor Department?

A. Yes, I am.

Q. As such I assume that you are responsible for carrying out, implementing the policies of the Secretary of Labor?

A. I am not concerned with the enforcement authority of the Secretary or carrying out any enforcement policies.

Q. I see. Have you, since you have been involved in these proceedings, dating back four years ago, ever had any occasion to analyze what impact, if any, there was in terms of how many people would ultimately be eligible for local union office if instead of having a two-year rule there was a three-year rule under a particular local union constitution?

A. No, sir.

Q. Never done that. Do you have any empirical information or any statistical data to support the proposition that more members would be eligible under a two-year rule than are in fact eligible under a three-year rule?

A. No, sir.

Q. You were in the room, I take it, Mr. Lahne, when you heard Mr. Kleiman and Mr. Rooney discuss the format of the local union meetings that they had participated in through the years; is that correct?

A. Yes, sir.

Q. Is it your testimony, Mr. Lahne, in the face of having heard Mr. Kleiman and Mr. Rooney, that in fact shop talk and discussions at the plant level are the equivalent of actual attendance at a local union meeting for purposes of acquiring knowledge as to how that local union functions?

A. I have stated that they are equally useful in my [92]

* * * *

No. 75-657

Supreme Court, U. S.
FILED
OCT 18 1976
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In the Supreme Court of the United States

OCTOBER TERM, 1976

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL–CIO, AND UNITED STEELWORKERS OF AMERICA, AFL–CIO, PETITIONERS

v.

W. J. USERY, JR., SECRETARY OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR

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In the Supreme Court of the United States

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LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, PETITIONERS

v.

W. J. USERY, JR., SECRETARY OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 520 F. 2d 516. The opinion of the district court (Pet. App. 17a-22a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 16a) was entered on August 5, 1975. The petition for a writ of certiorari was filed on November 3, 1975,

and was granted on February 23, 1976. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification" on the right of candidacy within the meaning of Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, when its effect is to disqualify 96.5 percent of the local union membership.

STATUTE INVOLVED

Section 401 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 532–533, 29 U.S.C. 481, provides in pertinent part:

TITLE IV. ELECTIONS

Terms of Office: Election Procedures

* * * * *

Sec. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * * * *

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. * * *

STATEMENT

1. The Secretary of Labor instituted this action under Section 402 of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482 ("LMRDA"), to set aside the election of officers conducted on June 22, 1970, by Local 3489, United Steelworkers of America, at Terre Haute, Indiana. The complaint (A. 2–4) alleged that the local had imposed an unreasonable qualification for candidacy for local union offices, in violation of Section 401(e), 29 U.S.C. 481(e), and had failed to elect its officers by secret ballot, in violation of Section 401(b).[1] The United Steelworkers of America intervened as a party defendant (A. 5–6).

Local 3489 is comprised of production and maintenance employees of Stran Steel Corporation of Terre Haute (A. 8). It is chartered by and subordinate to the United Steelworkers of America, AFL–CIO (the "International"), and is subject to the International's constitution (*ibid.*). One provision of

[1] Bernard Frye, an unsuccessful candidate for president, had complained of these violations to the union and, having exhausted his union remedies without securing relief, thereupon to the Secretary (Pet. App. 3a–4a; A. 16–17).

that constitution,[2] and the rule at issue here, restricts candidacy for local union office to members in good standing who have attended at least 18 of the 36 regular monthly meetings of the local preceding the triennial election (unless other union activities or work hours preclude attendance) (Pet. App. 3a; A. 8–10).

Most of the facts regarding the rule and its effects in this case were stipulated (A. 7–55). At the time of the 1970 election, Local 3489 had approximately 660 members in good standing, of whom only 23 were able to satisfy this precondition to candidacy. Nine or ten of those members were incumbent officers. Ultimately 13 candidates were nominated and ran for the union's ten offices. The candidates for vice president, recording secretary, financial secretary, treasurer, guide, and guard ran unopposed. Three candidates ran for president, and four ran for the three trustee positions (see Exhibit E, A. 23). Six of the thirteen candidates were incumbents, each of whom was reelected, meaning that the incumbents retained control of six of the ten union offices.[3]

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[2] See Article VII, Section 9 of the International constitution (A. 9).

[3] The Stipulation states (A. 11) that 22 members of the local—those listed in Exhibit D (A. 23)—were eligible for having satisfied the meeting attendance requirement. That list should have included Baker, the incumbent recording secretary, who was also stated to have been eligible (A. 11, ¶ 11). Thus there were 23 members eligible.

Of those 23, nine were incumbents (Uzzell, Satz, Baker, Layman, Krischak, Brown, Hoffman, Dayhuff, and Erickson) (A. 11). As petitioners suggest (Br. 7, n. 10), the inclusion of Brackall

During the relevant period the members of Local 3489 worked three shifts, Monday through Friday, without rotation (A. 10). From January 1967 through February 1970, monthly "split meetings" (on the second Wednesday and Thursday afternoons of each month) were held at the union hall, located some three miles from the plant. Beginning in March 1970 a single meeting was held on the third Sunday afternoon of each month (A. 10–11). Attendance at the monthly meetings (including both sessions of the split meetings) averaged only 47 (A. 11).

2. The district court dismissed the complaint, finding no violation of the Act (Pet. App. 17a–22a). It ruled that the meeting attendance requirement is reasonable under Section 401(e) because it leaves it "to each member to decide whether or not he will qualify

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as an eligible incumbent was error: whether or not he was an incumbent, he was not eligible (A. 14).

Brackall and Jones were nominated notwithstanding their ineligibility (A. 11–12). They were informed of their ineligibility and apparently stricken from the list of candidates (A. 14).

Of the 23 eligible candidates, five were not nominated for office (Jett, Kennedy, Batson, Debney, and J. L. Powell) (compare Exhibit D, A. 23, with the list of nominees at A. 11–12). Of the 18 eligible candidates nominated, six declined to run (Kirshak, King, J. Powell, McCloud, Satz, and Baker) (compare A. 11–12 with Exhibit E at A. 23), leaving 12 candidates for the union's ten offices. Wayne Larue was then allowed to run for guide notwithstanding his ineligibility under the meeting attendance rule, there having been no eligible candidate nominated and willing to run for that post.

Grievance Committee members are not "officers" within the Act's definition, and therefore the Secretary did not challenge the meeting attendance rule as it relates to Grievance Committee candidates.

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himself for union office" and because it bears a "necessary relationship to fitness for office" (*id.* at 20a).

The court of appeals reversed, relying in large measure on *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, in which this Court invalidated a rule restricting eligibility for major union offices to members who had previously held office. In that case the candidate limitation rendered 93 percent of the union members ineligible for office, and the Court said that a rule having such an effect "can hardly be a 'reasonable qualification'" under Section 401(e) (391 U.S. at 502). Here the meeting attendance rule disqualified 96.5 percent of the local union's membership from office, and the court of appeals said that "it cannot be deemed a reasonable qualification either" (Pet. App. 7a).

The court did not, however, rest its judgment on a determination that the large-scale disqualification caused by the meeting attendance rule was *per se* unreasonable. While the court stated that the disqualification of so high a percentage of the union membership might in itself be unreasonable (Pet. App. 8a), it held that the unreasonableness of the meeting attendance rule here was also shown by its tendency to produce other results inimical to the purposes of the LMRDA. Thus, the rule perpetuates "entrenched leadership" by making would-be challengers to union officers plan their campaigns at least 18 months before the next election, even though they might have been content with the incumbent leader-

ship at that time, and by disqualifying prospective candidates who had assiduously attended meetings for as long as 17 months in a row (Pet. App. 9a).

The court discounted petitioners' reliance on an outdated section of the LMRDA Interpretative Manual issued by the Secretary, which provided that a two-year, 50 percent meeting attendance requirement would not be deemed unreasonable under Section 401(e).[4] The court observed (Pet. App. 10a) that "the three-year rule can be 50% harsher," and "the reasonableness of the two-year rule does not determine the reasonableness of the three-year rule."

The court of appeals also rejected the argument that the three-year, 50 percent meeting attendance rule was a reasonable means of assuring candidates' interest in and knowledge of union affairs, noting that a similar claim had been made in support of the candidacy qualification invalidated in the *Hotel Employees* case. Nor could the rule be justified as an inducement to attendance at union meetings when it barred 96.5 percent of the members from candidacy for local office yet produced an average meeting attendance of only 47 out of 660 members. Finally, the court noted (Pet. App. 11a) that only one other national union[5] had specified a three-year period during which a

[4] The provision, Section 422.206 of the Manual, had been superseded by 29 C.F.R. 452.38, which provides that, in place of "arbitrary guidelines," reasonableness is to be judged "in the light of all the circumstances of the particular case." The guidelines issued by the Secretary concerning candidacy qualifications under the Act appear at 29 C.F.R. 452.35–452.38.

[5] See note 26, *infra*.

member must attend meetings to qualify as a candidate for local union office.*

SUMMARY OF ARGUMENT

Section 401(e) of the Labor-Management Reporting and Disclosure Act fosters democracy in the union electoral process by providing that "a reasonable opportunity shall be given for the nomination of candidates" and that every union member in good standing "shall be eligible to be a candidate" subject only to "reasonable qualifications uniformly imposed." The statutory language in question here—"reasonable qualifications"—must be narrowly construed, for "Congress plainly did not intend that [it] * * * should be given a broad reach." *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492, 499 (*"Hotel Employees"*).

It follows that a candidacy limitation having an inimical impact on union democracy can be reasonable under the Act only if it serves other union needs of such importance that, on balance, it must be tolerated notwithstanding its inconsistency "with the Act's command to unions to conduct 'free and democratic' union elections" (*Hotel Employees, supra,* 391 U.S. at 499). And the union must show that it cannot achieve the stated goals of an antidemocratic candidacy restriction by alternative means less antagonistic to the purposes

* The court of appeals also reversed the district court's dismissal of the Secretary's allegation that the union election had been conducted in violation of the Act's secret ballot requirement (Pet. App. 11a–15a). Petitioners have not sought further review of that ruling.

of the Act. See *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 244 F. Supp. 745, 749 (W.D. Pa.), dismissed as moot, 372 F. 2d 86 (C.A. 3), reversed, 389 U.S. 463, on remand affirmed in relevant part, 405 F. 2d 176.

Meeting attendance requirements may serve legitimate union purposes, as the Secretary of Labor has recognized, but petitioners' version of the rule is so unremittingly hostile to union democracy that the justifications for meeting attendance rules in general cannot save it. To begin with, it rendered 96.5 percent of the union membership ineligible for office. As this Court said of a candidacy restriction that disqualified 93 percent, a rule so restrictive of the freedom of choice of voters as well as would-be candidates "can hardly be a 'reasonable qualification'" under Section 401(e) (*Hotel Employees, supra,* 391 U.S. at 502).

Petitioners' 50 percent, three-year rule also favors incumbents by requiring would-be opposition candidates at election time to have had both the foresight and the cause to launch an opposition campaign 18 months earlier. The realities of union politics, however, are that opposition typically crystallizes into candidacies and full opposition slates only as the election draws near and issues of union governance become immediately topical. Petitioners' long-range planning requirement "substantially deplete[s] the ranks of those who might run in opposition to incumbents" and thus seriously impairs "[t]he check of democratic elections as a preventive measure" to

the abuses the Act meant to curb (*Hotel Employees, supra,* 391 U.S. at 499).

The ability of union members to qualify for candidacy by attending 18 of the union's 36 meetings over a three-year period does not establish the validity of the rule. Congress has sanctioned only those qualifications that are "reasonable," not all that a union member might satisfy by dint of his or her own efforts. Accordingly, most of the decisions striking down particular candidacy restrictions have involved rules with which individual members could have complied, and in *Hotel Employees* it was not dispositive that the qualification under attack left the eligibility of potential opposition candidates in the hands of the incumbency. "Reasonableness" is the standard and petitioners' rule does not measure up: it has the antidemocratic effects just mentioned, and it serves no legitimate union need that could not be satisfied by means less incompatible with the Act's democratic goals.

Petitioners suggest that the rule is justified because it promotes attendance at union meetings and therefore restrains arbitrary or corrupt union leadership. But petitioners have not shown that other incentives, not having so antidemocratic an impact at election time, are any less effective at inducing attendance than their rule—which, indeed, can actually encourage the attendance, not of the membership at large, nor even of all would-be opposition candidates, but only of those would-be candidates who in fact plan

their campaign at least 18 months in advance of the election.

Attendance at Local 3489's meetings during the relevant period averaged only 47 members out of 600. Even assuming that without the rule some of these individuals would have attended fewer meetings than otherwise, the gain in meeting attendance is far too small to justify disqualifying 96.5 percent of the union membership from holding office. Moreover, it is not suggested that with a more lenient candidacy requirement the rank-and-file attendance at union meetings would cease entirely, and petitioners do not explain how any lack of diligence or sharp practices by the leadership are more likely to be exposed and corrected by whatever incremental attendance may result from a 50 percent, three-year rule.

Nor can the rule be justified by the union's need to insure that only dedicated and knowledgeable members will be elected to office. The effective ability to lead is a campaign issue, entrusted by the Act to the union membership's "common sense and judgment in casting their ballots" (*Hotel Employees, supra,* 391 U.S. at 504). The assumption behind petitioners' rule, "that rank-and-file union members are unable to distinguish qualified from unqualified candidates," is contrary to the Act's premise "that citizens assumed to make discriminating judgments in public elections [can] be relied on to make such judgments when voting as union members" (*ibid.*).

Furthermore, it may be doubted whether attendance at union meetings is necessary to prepare for union

leadership, and, even if it is, petitioners have not shown that alternative measures would not be equally effective. Moreover, the rule "is not faithful to its own premise" (*Hotel Employees, supra,* 391 U.S. at 504), since it allows members whose work hours conflict with union meetings to run for office without having attended any meetings or undertaken any other activity to demonstrate their commitment or insure their capability.

Of the 72 international unions polled by the Secretary, representing 90 percent of the Nation's union membership, only 12 have any meeting attendance requirement at all. Only one other than the Steelworkers has a requirement extending beyond a two-year period. Petitioners' rule is thus "virtually unique in trade union practice" (*Hotel Employees, supra,* 391 U.S. at 505), and cannot be so critical to good union governance as to warrant precluding 96.5 percent of the union membership from running for office.

ARGUMENT

PETITIONERS' RULE REQUIRING CANDIDATES FOR UNION OFFICE TO HAVE ATTENDED 18 OF THE 36 UNION MEETINGS PRECEDING THE ELECTION IS NOT A "REASONABLE QUALIFICATION" UNDER SECTION 401(e)

A. THE REASONABLENESS OF A CANDIDACY REQUIREMENT MUST BE MEASURED BY ITS EFFECT ON UNION DEMOCRACY

Congress enacted the Labor-Management Reporting and Disclosure Act in large measure to curb and correct the misgovernment and abuses in union management uncovered during the extensive hearings

held by the Senate Committee on Improper Activities in the Labor and Management Field (the McClellan Committee). S. Rep. No. 187, 86th Cong., 1st Sess. 2 (1959); H.R. Rep. No. 741, 86th Cong., 1st Sess. 1 (1959); *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463, 469–470; *American Federation of Musicians* v. *Wittstein,* 379 U.S. 171, 177 and n. 4. Title IV of the Act was the outcome of Congress' belief that, because of their quasi-governmental powers, unions should be required to follow democratic processes "to insure that the officials who wield [this power] are responsive to the desires of the men and women whom they represent" (S. Rep. No. 187, *supra,* at 20; H.R. Rep. No. 741, *supra,* at 16). "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections." *Wirtz* v. *Local 153, supra,* 389 U.S. at 470. It "establishes a set of substantive rules governing union elections * * * and it provides a comprehensive procedure for enforcing those rules." *Trbovich* v. *United Mine Workers of America,* 404 U.S. 528, 531. See *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492, 498 (*"Hotel Employees"*).

This case is concerned with the portion of Title IV that deals with the nomination of candidates for office. Because it is the very start of the election process, any substantial deviation from democratic methods of nomination tends to defeat the goal of union government responsive to the will of its members. Congress

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therefore recognized that there must be a "real opportunity to nominate opposing candidates," 105 Cong. Rec. 885 (1959), because otherwise "practical control of elections is left in the hands of autocratic union officials," 105 Cong. Rec. 14273 (1959). Section 401(e), 29 U.S.C. 481(e), thus establishes the right of every union member in good standing to be a candidate for any office "subject * * * to reasonable qualifications uniformly imposed."

The Act offers no specific guide for determining what are "reasonable qualifications," but this Court in the *Hotel Employees* case examined the congressional intent behind the reasonableness requirement and explained the scope of inquiry appropriate to the evaluation of a particular candidacy qualification. The Court observed that Congress looked to the American political process at large as its model for democratic union elections (391 U.S. at 504) and "plainly did not intend that the authorization in § 401(e)" to impose preconditions on candidacy "should be given a broad reach" (*id.* at 499). The Court also stated that "[u]nduly restrictive candidacy qualifications" threaten to defeat the Act's goals, and indicated that "candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents" are disfavored (*ibid.*).

Ultimately each candidacy requirement "must be measured in terms of its consistency with the Act's command to unions to conduct 'free and democratic' union elections" (*ibid.*). Accordingly, the union's bur-

den of showing a legitimate union need for the restriction on candidacy should be commensurate with the qualification's impact on union democracy, and an essential element of the calculus of reasonableness is the union's ability to achieve the stated goals of a particular candidacy qualification by alternative means that may be less inimical to the purposes of the Act (*Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 244 F. Supp. 745, 749 (W.D. Pa.), affirmed in relevant part, 405 F. 2d 176 (C.A. 3)).

Under these standards, petitioners' meeting attendance requirement is unreasonable. The Secretary of Labor, to whose "special knowledge and discretion" the enforcement of Title IV has been entrusted (*Dunlop* v. *Bachowski,* 421 U.S. 560, 568; *Wirtz* v. *Local 153, supra,* 389 U.S. at 473; *Calhoon* v. *Harvey,* 379 U.S. 134, 140), has recognized that "[i]t may be reasonable for a [union] to establish a [meeting attendance requirement] * * * in order to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization," but he has cautioned that the reasonableness of such a qualification "must be gauged in the light of all the circumstances of the particular case, including * * * the number of meetings which must be attended, and the period of time over which the requirement extends * * * and the impact of the rule, i.e., the number or percentage of members who would be rendered ineligible by its application." 29 C.F.R. 452.38. As we now show, petitioners' 50 percent, three-year meeting attendance requirement so restricts the free choice

of union members to select their officers, and is otherwise so antithetical to union democracy, that the justifications for meeting attendance requirements in general cannot excuse its antagonism to "the Act's command to unions to conduct 'free and democratic' union elections" (*Hotel Employees, supra,* 391 U.S. at 499).

B. PETITIONERS' MEETING ATTENDANCE REQUIREMENT DEFEATS THE ACT'S GOAL OF ASSURING "FREE AND DEMOCRATIC" UNION ELECTIONS

The court of appeals determined that petitioners' meeting attendance qualification rendered 96.5 percent of the local union's membership ineligible for office (Pet. App. 3a).[7] A candidacy restriction that eliminates so large a percentage of the membership, and so restricts the freedom of choice of the voters,[8] stands

[7] Petitioners suggest (Br. 34, n. 31) that this determination was "based on an erroneous factual premise" because "the chances are" that some union members, in addition to the 23 who were eligible for having attended the required number of meetings, might have been eligible by virtue of a combination of meetings actually attended plus credits given for meetings missed on account of working hours or other union activities.

This argument comes too late. The facts necessary to sustain petitioners' hypothesis have always been readily available to the union, if such facts exist, and their absence from the record does not support petitioners' speculative challenge to the court of appeals' ruling.

[8] As the Court has recognized, more is at stake in Title IV cases than the right of individual members to seek union office. "The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election" (*Wirtz v. Local 125, Laborers' International Union*, 389 U.S. 477, 483). Rather, Congress was at least equally concerned with the right of

in such stark contrast to all plausible indicia of the democratic process that absent extraordinary circumstances it should be held invalid without further inquiry. In *Hotel Employees* this Court stated (391 U.S. at 502) that a candidacy limitation that disqualified 93 percent of the union membership "can hardly be a 'reasonable qualification'" under Section 401(e), and, as the court of appeals ruled (Pet. App. 7a), petitioners' rule "cannot be deemed a reasonable qualification either."

The percentage of union membership disqualified from office is not, however, the sole measure of the inimical impact on union democracy of a rule, like petitioners', that requires attendance at half of the 36 monthly meetings between triennial elections. As the court of appeals observed (Pet. App. 9a), the qualification requires would-be candidates to plan their campaigns at least 18 months before the election.[9] Thus a union member who regularly attended

the membership at large to choose union officers responsive to their wishes. See S. Rep. No. 187, 86th Cong., 1st Sess. 6–7 (1959) ("Union members have a vital interest * * * in the policies and conduct of union affairs. To the extent that union procedures are democratic they permit the individual to share in the formulation of union policy. * * * What is required is the opportunity to influence policy and leadership by free and periodic elections.").

[9] The Local's by-laws provide for attendance credits for members whose working hours or other union activities prevent attendance at the regular monthly meeting (A. 9). Apparently this "excuse" provision in practice qualifies very few members who have failed to attend the required 18 meetings; in this case only one member so benefited (Pet. App. 7a, n. 5).

union meetings for up to 17 months and otherwise demonstrated interest in and familiarity with the union's affairs could be disqualified from running for office and the membership denied the chance to vote for him.[10]

Such a long range planning requirement inevitably gives incumbents an advantage far beyond that tolerated in the American political system at large. It is unreasonable to assume that union leadership unobjectionable during the first year and a half of its incumbency necessarily will be equally unobjectionable during the next year and a half, or that every union member opposed to the leadership at election time would necessarily have had the foresight or the cause to launch an opposition campaign 18 months earlier. In most unions, there is no organized opposition party that retains its identity from election to election; typically an opposition group will form in response to a specific issue and will organize and exist only during a particular election.[11] And even if some dissidents do qualify themselves, the 50 percent, three-year meeting requirement is likely to impede their ability to muster a slate of eligible candidates large enough to contest the incumbents in a sufficient number of offices to make the challenge to the estab-

[10] Cf. *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, *supra*, 389 U.S. at 466, where the same effects resulted from a 75 percent, two-year meeting attendance requirement.

[11] Taft, *The Structure and Government of Labor Unions* 35–37, *supra*, 389 U.S. at 466, where the same effects resulted from a 75 (1959).

52 (1954); Leiserson, American Trade Union Democracy 74-75

lished leadership worthwhile.[12] Moreover, the effect of the rule in some cases may be to encourage disregard of the membership's wishes by union leadership already inclined in that direction, if it becomes clear nearly a year and a half before the next election that the ranks of eligible opponents will be meager or that the most articulate and persuasive opposition spokesmen have already been disqualified.

In *Hotel Employees* this Court stated that the anti-democratic impact of candidacy restrictions disqualifying a large percentage of the union membership is contrary to the purposes of the Act (391 U.S. at 499):

> Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

Petitioners (Br. 35–36) and *amicus curiae* (Br. 13) seek to distinguish *Hotel Employees,* and to estab-

[12] Because an opposition group in a union is likely to find that many members do not support it, and that others who do support it would not wish to run for office as opposition candidates or are unsuitable candidates for reasons of age, health, or otherwise, the pool of theoretically eligible candidates is likely to yield only a small number who are actually available as opposition candidates even when restrictions on candidacy are lenient. This number may well shrink to a practical nullity when the pool of theoretically available candidates has already been diminished by a restrictive candidacy requirement, like petitioners', to less than four percent of the union membership.

lish the validity of the candidacy requirement in question here, by pointing out that the candidacy limitation in that case allowed the incumbents to control eligibility, whereas the meeting attendance requirement leaves eligibility solely to the foresight and inclination of the individual union member. However, this argument, which forms the basis for the decision in *Brennan* v. *Local 5724, United Steelworkers of America,* 489 F. 2d 884, 889 (C.A. 6), and the district court decisions cited by petitioners (Br. 5), distorts the statutory standard and misperceives the teaching of *Hotel Employees.*

Congress did not say that any candidacy requirement is permissible so long as a union member can satisfy it by dint of his own efforts. The standard stated in Section 401(e) is reasonableness, and "Congress plainly did not intend that [it] * * * should be given a broad reach" (*Hotel Employees, supra,* 391 U.S. at 499). Accordingly, most cases holding particular restrictions on candidacy unreasonable have involved qualifications with which it was possible for the individual member to comply. In addition to the decisions involving other meeting attendance rules,[13]

[13] *Brennan* v. *Local Union No. 639, International Brotherhood of Teamsters,* 494 F. 2d 1092 (C.A.D.C.) (holding unlawful a meeting attendance requirement that disqualified 97 percent of union membership); *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 244 F. Supp. 745 (W.D. Pa.), affirmed in relevant part, 405 F. 2d 176 (C.A. 3) (attendance rule disqualifying 97 percent held unreasonable); *Wirtz* v. *Local 262, Glass Bottle Blowers Association,* 290 F. Supp. 965, 967 (N.D. Cal.) (striking down an attendance requirement disqualifying 98.4 percent of the membership).

the courts have struck down preconditions to candidacy requiring timely advance payment of dues for a period of time;[14] filing a declaration of intent to be a candidate in advance of nominations,[15] and membership in a "parent local" requiring payment of an additional initiation fee.[16]

As these numerous decisions recognize, this Court in *Hotel Employees* did not attribute controlling significance to the fact that in that case would-be candidates could not by their own efforts insure their eligibility. Nor would it be consistent with the statutory purpose to hold it dispositive here that they can. To say (Pet. Br. 35) that because union members have it within their power to attend meetings petitioners' rule itself disqualifies no one, is to ignore the fact that the rule disqualified 96.5 percent of the membership in this case. The inevitable effect of a 50 percent, three-year rule is to restrict severely the

[14] *Wirtz* v. *Local 9, International Union of Operating Engineers,* 366 F. 2d 911 (C.A. 10); *Goldberg* v. *Amarillo General Drivers,* 214 F. Supp. 74 (N.D. Tex.); *Wirtz* v. *Local 410, International Union of Operating Engineers,* 53 L.C. ¶ 11,154, 61 LRRM 2396 (N.D. N.Y.), reversed on other grounds, 366 F. 2d 438 (C.A. 2); *Wirtz* v. *Local 545, International Union of Operating Engineers,* 64 LRRM 2449 (N.D. N.Y.), affirmed, 381 F. 2d 448 (C.A. 2).

[15] *Wirtz* v. *Local 30, International Union of Operating Engineers,* 242 F. Supp. 631 (S.D. N.Y.), reversed on other grounds, 366 F. 2d 438 (C.A. 2); *Wirtz* v. *Local 545, International Union of Operating Engineers,* 64 LRRM 2449 (N.D. N.Y.), affirmed, 381 F. 2d 448 (C.A. 2).

[16] *Hodgson* v. *Local 18, International Union of Operating Engineers,* 440 F. 2d 485 (C.A. 6), certiorari denied, 404 U.S. 852; *Wirtz* v. *Local 545, International Union of Operating Engineers,* 64 LRRM 2449 (N.D. N.Y.), affirmed, 381 F. 2d 448 (C.A. 2).

choices available to the membership by prohibiting potentially qualified candidates from running for office, and to favor incumbents by making would-be opposition candidates plan their campaign at least 18 months in advance of the election. Congress could not have intended to include a candidacy qualification having such antidemocratic effects among those that are "reasonable" under Section 401(e).

C. PETITIONERS' MEETING ATTENDANCE REQUIREMENT SO DISTORTS THE DEMOCRATIC PROCESS THAT THE JUSTIFICATIONS FOR MEETING ATTENDANCE REQUIREMENTS IN GENERAL CANNOT SAVE IT

We have argued above that a candidacy qualification that disqualifies 96.5 percent of the union membership is so antithetical to union democracy that it should be held illegal *per se*. At the very least, however, the proponents of such a rule should be required to demonstrate that it serves legitimate union needs of the highest order, and that these needs cannot be met by methods that trench less severely upon the goals of the Act. We submit that petitioners have failed to make such a showing and that their meeting attendance requirement is irreconcilably hostile to "free and democratic" union elections.

1. Petitioners first suggest (Br. 19–21) that a three-year, 50 percent rule is warranted because it encourages attendance at union meetings. Yet petitioners have not shown (and indeed do not even argue) that such a rule is the only way, or even the best way, to foster attendance by the membership; nor have they offered any other reason why, from among various

possible inducements to attendance, they have chosen one that happens also to disqualify nonattending members from holding union office.[17]

Apparently in recognition that the rule acts as an attendance incentive only for would-be candidates, petitioners make the seemingly narrower contention that it is justified because (Br. 21) it "insures that those who are in opposition to the leadership will come to union meetings in order to keep ripe their right to run for local union office." The presence of the opposition at union meetings is said to deter chi-

[17] It may be, as petitioners assert (Br. 19), that "there is general apathy among workingmen about attending union meetings"; indeed, evidence of record indicates that "practically nothing" (A. 41–42), including providing refreshments at the meeting place or fining nonattending members, has proved effective in permanently increasing attendance at routine union meetings. This does not, however, ease petitioners' burden of demonstrating why their rule is necessary, or even preferable to the many other alternative incentives that might be equally as effective (or ineffective) without disqualifying nearly all of the membership from eligibility for office.

None of the documents stipulated (A. 17–21) to trace the genesis of the present three-year, 50 percent rule, from its origin as a six month, 50 percent rule in the first constitution of the United Steelworkers of America (adopted in 1942) through its various modifications at the biannual conventions of the International (at each of which a constitution is adopted), indicates that the rule was ever intended to be a general incentive to meeting attendance by the membership at large. Indeed, the only reason ever advanced for extending the rule from six months to progressively longer periods was that the term of union office had been extended (from one, then to two, and finally to three years). In short, the rule seems to have been mechanically extended wholly without regard to its impact on meeting attendance.

canery or corruption on the part of the leadership, and thus, according to petitioners (*ibid.*), "the rule actually furthers the objectives of the Act."

This argument proceeds on several faulty premises. First, it assumes that the dissatisfaction with the incumbency felt by would-be opposition candidates at election time will have crystallized and been acted upon at least 18 months earlier. For the reasons already stated, however (*supra*, pp. 17–19), it is at least equally likely that most would-be candidates will not have anticipated their opposition status that far in advance. Indeed, petitioners' rule may actually discourage attendance by opponents of the incumbent leadership who find themselves within the 18-month period with no means of qualifying themselves in time to have any impact on the election.

Second, petitioners' argument assumes that there are no means less destructive of the democracy of the electoral process that can police the union leadership so effectively as a three-year, 50 percent attendance requirement as a condition of candidacy. It is not suggested that without so strict a requirement attendance at union meetings by the rank-and-file would fall off completely, and petitioners do not explain how dishonest or corrupt practices by the leadership are more likely to be exposed and corrected by whatever incremental attendance the rule may in fact foster. Indeed, although attendance by the membership may be an effective restraint upon at least some kinds of arbitrary or dishonest union leadership, wholly alternative methods, such as the use of an independent reporter to record and transcribe the business conducted at the meeting, might also expose any lack of diligence or sharp practices engaged in by the incumbency.

Finally, even if the rule does encourage some members to attend some union meetings, the average attendance at Local 3489's regular meetings during the relevant period was only 47 members out of 660, and such a record cannot justify disqualifying 96.5 percent of the members from election to office. The result is no better in the other cases in which the Secretary has challenged the reasonableness of the same rule. In Steelworkers Local 1150, with 3,000 members, meeting attendance averaged 68;[18] in Local 1299, with 9,000 members, attendance averaged 125;[19] in Local 3911, with 1,900 members, attendance averaged 76;[20] in Local 5724, with 1,700 members, attendance averaged 45;[21] and in Local 6799, with 578 members, day shift

[18] See *Shultz* v. *Local 1150, United Steelworkers of America*, 64 L.C. ¶11,288, 75 LRRM 2869 (S.D. Ind.) (upholding the rule as reasonable), vacated on other grounds, C.A. 7, No. 71–1467, July, 1971 (unreported).

[19] See *Shultz* v. *Local 1299, United Steel Workers of America*, 324 F. Supp. 750 (E.D. Mich.) (upholding the rule), affirmed in part *sub nom. Hodgson* v. *Local 1299, United Steelworkers of America*, 453 F. 2d 565 (C.A. 6).

[20] See *Brennan* v. *Local 3911, United Steelworkers of America*, 372 F. Supp. 961 (N.D. Ill.); 71 L.C. ¶13,730, 83 LRRM 2519 (N.D. Ill.) (holding the rule unreasonable).

[21] See *Brennan* v. *Local 5724, United Steelworkers of America*, 489 F. 2d 884 (C.A. 6) (upholding the rule).

attendance averaged 46, and swing shift attendance averaged 25 or fewer.[22]

2. Petitioners also seek to justify their three-year, 50 percent attendance requirement by arguing that it insures that would-be office holders have demonstrated an interest in union affairs prior to the election. Yet the requirement disqualifies a union member who may have displayed his interest in union affairs by attending union meetings for as long as 17 months, and it assumes that attendance at union meetings is virtually the only means by which a member can demonstrate that interest. Although under the Local's by-laws credit is given for meetings missed on account of work hours or other, conflicting union activities, no credit is given for union activities engaged in at times that do not conflict with the union meeting. And the rule irrebuttably presumes a lack of interest on the part of would-be candidates whose failure to attend the requisite number of meetings is caused by jury duty, military service, or some unforeseen emergency such as an illness or accident.

Moreover, whether a candidate is likely to retain his interest in union affairs if elected, and the relation-

[22] See *Shultz* v. *Local Union 6799, United Steelworkers of America*, 60 L.C. ¶10,261, 71 LRRM 2820 (C.D. Cal.) (holding the rule reasonable), affirmed on other grounds, 426 F. 2d 969 (C.A. 9), affirmed on other grounds *sub nom. Hodgson* v. *Local 6799, United Steelworkers of America*, 403 U.S. 333.

In each of the foregoing cases (see nn. 18–22, *supra*) additional members were eligible for candidacy because of excused absences due to meetings being held while work shifts were in progress. The resulting higher eligibility percentage was plainly not caused, however, by the rule's encouragement of attendance.

ship of his past performance to that question, is first and foremost a campaign issue. Petitioners' insistence that a record of attendance at 18 of 36 meetings over a three-year period is necessary to protect the union against election of officers of unproven dedication unwarrantedly assumes that the union membership is incapable of achieving the same goal by educated use of the ballot. See *Hotel Employees, supra*, 391 U.S. at 504.

3. The need to assure capable union leadership is the third union need asserted by petitioners to justify their meeting attendance requirement (Br. 23–27). The thesis is that attendance at the regularly scheduled union meetings is so essential to an adequate understanding of the complicated duties and responsibilities of a union leader that only members who have attended the required number of meetings should be permitted to run for office.

Like the preceding argument that the rule is necessary to guarantee committed leaders, this contention is foreclosed by *Hotel Employees* (391 U.S. at 504):

> It assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates * * *. But Congress' model of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots.

Petitioners have "made no showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members" (*ibid.*), and accordingly a concern for capable leadership cannot justify a rule that disqualifies so large a percentage of the union membership from running at all.

Moreover, petitioners have not shown a clear and direct relationship between the meeting attendance requirement and the union's need for qualified and knowledgeable leadership. The record contains uncontradicted expert testimony that "the meeting attendance rule is not necessary to give [a] member a knowledge of what transpires in the Union and what the Union's problems are," and that such knowledge is typically acquired by union members at the work place itself (A. 39–41).[23] Furthermore, like the prior office-holding restriction invalidated in *Hotel Employees,* petitioners' rule "is not faithful to its own premise" (391 U.S. at 504), since it allows members to run for office even if they have attended fewer than the required number of meetings, or no meetings at all, so long as the failure to attend was due to conflicting working hours or other union activities (A. 9).[24]

[23] In dispute of this conclusion, petitioners have attached to their brief an appendix setting forth testimony given in another case by counsel for the International and by two International employees. This testimony tends to show, *inter alia*, that the Steelworkers have a highly centralized International Union, which negotiates collective bargaining agreements for its locals (Br. App. 17, 18, 25, 27, 30); that the International maintains special departments to provide information and assistance to local unions in such areas as bargaining and contract administration, pensions, insurance, and civil rights (Br. App. 27–28); that International staff representatives are ever present to furnish guidance in the conduct of local union affairs (Br. App. 19–22, 27, 28, 30); and that the International sponsors various training programs and seminars to acquaint officers and members with current problems facing the union (Br. App. 21). Indeed, as part of this testimony, the International's General Counsel admitted that it would be possible for a member who had never attended a meeting to function as a union officer (Br. App. 55).

Finally, although some of the reasons urged by petitioners in justification of their requirement may support the legitimacy of *a* meeting attendance rule, none even addresses, let alone sustains, the need for a candidacy rule requiring attendance at half of the regular meetings over a 36-month period.[25] When the International constitution was first drawn up in 1942, it conditioned candidacy on attendance at one-half of

[24] *Amicus* suggests an analogy between the Steelworkers' attendance requirement and citizenship or residency requirements common in political elections, arguing that the goals of the former are "quite similar" (Br. 7) to those of the latter, which have been held to justify the restrictions on candidacy that those requirements embody. But the Steelworkers have their own "citizenship" (two years' membership) and "residence" (employment in the plant) requirements (A. 10) to assure minimal familiarity with the union's affairs, making an additional 50 percent, three-year meeting attendance requirement superfluous in this regard as well as grossly more restrictive of the pool of eligible candidates than are citizenship and residency requirements.

[25] The Secretary formerly sanctioned a two-year meeting attendance rule, but, as the court below noted (Pet. App. 10a), petitioners' three-year rule "can be 50% harsher as to the number of meetings which a member must attend to qualify for office and

the meetings for six months prior to the election (A. 19). As the term of office for the constituent local unions has increased from one to three years, the attendance rule has also been extended, and it is now the most restrictive of its type mandated by any international constitution. The Secretary introduced into evidence a chart showing that, among 72 international unions, comprising 90 percent of the nation's union membership, only 12 had any mandatory meeting attendance requirement at all, and only one other than the Steelworkers had a requirement extending beyond a two-year period (A. 31–33, 45–48).[26] Thus, again like the requirement in *Hotel Employees*, petitioners' rule "is virtually unique in trade union practice" (391 U.S. at 505), and it therefore can hardly be said to be necessary to good union governance.

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as to the time limitations imposed on his decision to seek office." Further experience in administering the Act has convinced the Secretary, in light of court decisions, "that it is not feasible to establish arbitrary guidelines for judging the reasonableness of such a qualification. Its reasonableness must be gauged in the light of all the circumstances of the particular case * * *." 29 C.F.R. 452.38.

[26] The Railroad Trainmen Union has an attendance requirement spanning 36 months, requiring would-be candidates to have attended seven meetings during that period (two of them in each of the two years preceding the year of the election, and three of them in the year of the election) (A. 47, 48). Four unions have meeting attendance requirements extending for a six-month period; two, for a 12-month period; and three for a 24-month period (A. 46–47). The Boilermakers Union requires that prospective candidates must attend a number of meetings fixed by the local (A. 33, 46, 48).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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Petitioners,

v.

William J. Usery, Secretary of Labor,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

The Secretary makes two attacks on the Steelworkers' meeting attendance rule. One is the "high" percentage ineligible *per se* approach seemingly relied upon by the court below. The second argues that the validity of a qualification depends on whether the union can demonstrate that it serves legitimate union needs "of the highest order" and that these needs cannot be met by other methods which the Secretary thinks are as or more effective (Br. 22). We respond briefly below.

A. The Secretary Articulates No Standard.

Both of the Secretary's approaches suffer from a common flaw. Nowhere has he formulated a standard by which this Court and the unions governed by the statute can determine the reasonableness of a qualification for candidacy, such as the meeting attendance rule. We start with the knowledge that the Secretary considers it reasonable for a union to establish meeting attendance requirements and that those requirements are designed to obtain candidates with a demonstrated interest in union affairs and who are sufficiently familiar with the problems of the organization (App. 50-55, 29 C.F.R. 452.38). What we cannot ascertain either from the Secretary's brief or his latest regulation[1] is the point at which this otherwise reasonable requirement turns unreasonable. If eligibility percentages are controlling, as the Secretary seems to suggest, what is the minimum? How does a union guess when its rule crosses the line? Similarly, if the length of the attendance measuring period is controlling, what is the dividing line between a lawful and unlawful period? How can it be determined?[2]

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1. The Secretary describes as "outdated" his regulation sanctioning a rule requiring attendance at half the meetings in a two-year period (Br. 7). We point out that the "old" regulation was in force when the challenged election in Local 3489 was held and is therefore not "outdated" as far as this case is concerned. Moreover, his new regulation (29 C.F.R. § 452.38 (1974)) obviously was not prompted by this Court's decision in *Wirtz v. Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492 (1968) inasmuch as it was promulgated some six years after that decision.

2. If the measuring period in the Steelworkers' rule were limited to the last year of the term, the Secretary would, no doubt, assail it as unreasonable by pointing to those members who had faithfully attended during the first two years of the term when the issues in which they were interested were ripe.

These problems in determining reasonableness[3] are compounded by another dilemma. If the union guesses wrong and does not apply a candidacy requirement which it should have, e.g., in the mistaken belief that the as yet undefined line was crossed in a particular local, then it will run afoul of another provision in Section 401(e), 29 U.S.C. § 401(e), which *requires* that "the election be conducted in accordance with the constitution and by-laws of [the union] insofar as they are not inconsistent with the provisions of this subchapter."

This Union's task has not been made easier by the Secretary's repeated flipflop in position with respect to meeting attendance rules and the importance assigned to eligibility percentages in Department of Labor directives (App. 50-55, 29 C.F.R. 452.38). Indeed, in light of these contradictions, the Secretary's most recent view is entitled to no special weight. *United Housing Foundation, Inc. v. Forman,* 421 U.S. 837, 858, n. 25 (1975).

---

3. The Secretary's case-by-case approach would require each Steelworker local to determine how many of its members were eligible in order to determine whether it met an undefined minimum eligibility percentage. Where there are steady afternoon and rotating shifts, as in basic steel, and local union membership in the 1,000 to 20,000 range, the administrative burden would be impossible. Hundreds of thousands of time cards and other employment records would have to be checked. The Secretary of Labor, with all the investigative resources at his command, did not undertake such a check in a meeting attendance case involving a basic steel local. *Schultz v. Local 1299, United Steelworkers of America,* 324 F.Supp. 750 (E.D. Mich. 1970), *aff'd in part, sub nom., Hodgson v. Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971).

B. *Hotel Employees* Did Not Prescribe An "Effects Test" Where The Member Controls His Own Eligibility.

In our opening brief (33-37), we showed that the reasonableness of the Steelworkers' meeting attendance rule cannot be made to turn on the percentage of members who choose to comply with it. As the Secretary himself has declared, it would be "less than fair" to attack the rule on that ground. Instead, a candidacy requirement such as the meeting attendance rule is reasonable within the meaning of the statute if it imposes no undue or onerous burden on the member who wishes to become a candidate (it is not *unduly* restrictive) and and it serves legitimate union purposes. If both tests are satisfied, say we, the rule cannot be assailed as unreasonable merely because a "high" percentage of members take themselves out of the running.[4]

The Secretary misreads this Court's decision in *Hotel Employees*. That case did not lay down a hard and fast test based on the percentage qualifying. As we stressed in our opening brief (34-35), the prior office requirement in *Hotel Employees* prevented members from qualifying who wished to do so. Moreover, through the use of appointive powers, incumbent officers there determined who could become eligible for office. The percentage eligible is clearly relevant in determining the reasonableness of such a rule. But the Steelworkers'

4. The Secretary twists our argument beyond recognition (Br. 20-21). The test we urge is not whether it is *possible* for the member to comply but whether he could do so without being subjected to an onerous burden. It is "possible" to satisfy a 100 percent meeting attendance requirement but no one suggests that such a rule would be reasonable.

rule rests control of eligibility in the hands of the member himself. Any member who wishes to make himself eligible can do so by taking the unburdensome step of attending one-half the meetings. The reasonableness of such a rule cannot be determined by the percentage of members who choose not to comply.[5]

The Secretary also misconstrues another leg in our argument. We do not assert that an unburdensome candidacy requirement is reasonable if it serves no valid union purpose. Indeed, we have insisted all along that the meeting attendance rule serves not one but three legitimate union objectives. For that reason, we are surprised that the Secretary relies on *Hodgson v. Local 18, International Union of Operating Engineers,* 440 F.2d 485 (6th Cir. 1971), *cert. denied,* 404 U.S. 852 (1971) in support of his argument on this point (Br. 21, n. 8). The Sixth Circuit which decided *Local 18* later distinguished the double initiation fee requirement there at issue from the Steelworkers' meeting attendance rule as follows:

> ". . . This court invalidated the election in *Local Unions 18*, on the following two-fold reasoning: the union had applied a rule which (1) placed a price tag on a member's right to run for office; and (2)

5. As we have shown, officer control over and the lack of membership self-determination in eligibility were of controlling significance in *Hotel Employees*. The Secretary's assertion (Br. 21) that the cases he cites (*id,* n. 14, 15, 16) "recognize" the contrary is simply not true. With the exception of the one clearly inapposite case discussed above, all these decisions pre-date *Hotel Employees* and unless gifted with prescience, their authors could not have "recognized" what facts this Court would deem controlling in a later decision.

had no bearing on a member's fitness to hold office. 440 F.2d at 487-88. These deficiencies were deemed to be antithetical to the policies of LMRDA. The fact that the Union rule also had the effect of precluding a certain percentage of members, there 60 per cent, from running for office was plainly not the basis of the reasoning of this court.

"We believe that the Steelworkers' rule has a direct, substantial relationship to fiitness to hold office in that participation in union meetings is one indicia of interest in union affairs. Further, it does not place any price tag on the right to be a candidate. As such, the rationale of *Local Unions 18* does not support the Secretary's position here." *Brennan v. Local 5724, United Steelworkers of America,* 489 F.2d 884, 889 (6th Cir. 1973).

One matter on which the Union and the Secretary agree is that Title IV of the LMRDA was designed to cure a specific evil, namely, unduly restrictive election structures which make it impossible to remove entrenched incumbents. That being so, we have shown or offered to prove in the meeting attendance cases that the Steelworkers' rule does not *in fact* preclude election contests or entrench incumbents (Petitioners' Opening Brief, 30-31). The Secretary's entrenchment theories collapse in the face of *facts* showing wholesale changes among officers in Local 3489 and throughout the Steelworkers. Indeed, he has expressly disclaimed any contention that the meeting attendance rule actually operates to perpetuate incumbents or prevent contests (*id,* n. 27). Yet, these facts are a truer measure of whether Steelworker local union officers are entrenched or insulated than the "effects test" offered by the Secretary.

Another measure is the results of the April, 1976 election of Steelworker local union officers. Of 5,303 locals, new presidents were elected in 2,016 (38 percent), new vice-presidents in 2,920 (55 percent), new recording secretaries in 1,892 (36 percent), new financial secretaries in 1,461 (27 percent) and new treasurers in 1,935 (36 percent).

C. The Secretary's Fall Back Argument—Shifting The Burden To The Union.

The Secretary's fall back position is that if the meeting attendance rule is not unreasonable *per se,* it becomes unreasonable unless the union can come forward and prove that the rule serves legitimate "union needs of the highest order" which cannot be met by alternative methods, such as an independent reporter, less objectionable to the Secretary (Br. 22, 25). Once again, no standards are set forth by which a court or unions can determine whether or not a particular candidacy requirement is sufficiently worthy to meet the statute. Instead, the Secretary attempts by this argument to shift the burden which is properly his to the Union.[6]

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6. There is another attempt to shift the Secretary's burden to the Union (Br. 16, n. 7). On this record, no one can say for certain how many members of Local 3489 were elegible. This is so because when the Department of Labor investigator checked the employer's work records to determine excuse entitlement, he did so for only a handful of members (App. 83-86). In our opening brief (8), we indicated why we believe additional members were eligible. In any case, it is the Secretary who examined the employer's records. More importantly, it is he who alleges that a high percentage of members was ineligible. Accordingly, the burden is his, not ours.

First, nothing in the statute, the legislative history or this Court's decision in *Wirtz v. Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492 (1968) suggests that Congress had such a test in mind when it required that candidacy qualifications be "reasonable." Indeed the legislative history seems to foreclose such a result for it makes clear that Congress meant for the unions themselves to design the specific election machinery and procedures which they, rather than Congress or the courts, believed best accommodated the particular needs and circumstances of their own membership, subject, of course, to the broad principle of reasonableness enunciated by the statute. See, S. Rep. No. 187, 86th Cong. 1st Sess. (1959), page 5; 105 Cong. Rec. 6741 (April 25, 1959, remarks of Sen. Morse). This Court has observed that one of the Congressional purposes is to remedy election abuses "without departing needlessly from the long-standing Congressional policy against unnecessary governmental interference with internal union affairs." *Hodgson v. Local Union 6799, United Steelworkers of America,* 403 U.S. 333, 339 (1971).

Second, we submit that a rule which seeks to encourage meeting attendance, particularly by those opposed to the officers, and which seeks to insure that those seeking office have demonstrated an interest in union affairs and have a sufficient working knowledge of the union's affairs and familiarity with its problems to serve the membership and intelligently fulfill the duties of office is a rule which does serve the highest needs of a labor union. It thus stands in marked contrast to a candidacy qualification whose only purpose, as in *Local 18, supra,* is to levy a tax on running for office. Indeed as we pointed out in our first brief (21, 22, 27, 28), the Secretary of Labor has himself acknowledged that

meeting attendance qualifications are a "reasonable means of encouraging participation in the affairs of the union" and are reasonably designed to obtain candidates with "a demonstrated interest in union affairs" and who are sufficiently familiar with the affairs and problems of the organization (App. 50-55). Even in his most recent pronouncements, the Secretary recognizes that it may be reasonable for a union to establish a meeting attendance requirement ". . . in order to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization . . . ." (Br. 15, 29 C.F.R. 452.38.)

Third, we examine the one measure suggested by the Secretary as an alternative to the meeting attendance rule. While acknowledging the effectiveness of the meeting attendance rule as a restraint on union leaders, he suggests that the use of an independent reporter to record the business transacted at the meeting will do as well by exposing impropriety (Br. 24-25). This suggestion, even if local unions could afford to implement it, is both useless and impractical. The meeting attendance rule is aimed at bringing the opposition to the meetings so that union bargaining policies, grievance processing, political action and the entire range of decisions will be fully debated and not adopted without effective membership control. The presence of an independent reporter will not further these democratic objectives. All a reporter could do is insure accuracy in the minutes of the meeting. That hardly guarantees debate, opposition or membership participation in union decisions. Moreover, unfaithful reporting of meeting business is not often cited as a nagging problem in union government. Accordingly, the presence of an independent reporter serves no useful purpose at all much less as a viable alternative to the meeting attendance requirement.

Finally, the Secretary contends (Br. 28) that the Union "is not faithful to its own premise" because the excuse provision allows members to run for office who had not attended meetings because they were working or were engaged in union activities at the time of the meeting. This contention is, to us, quite startling.[7] We are startled because it is the Secretary who has consistently emphasized that unions with meetings attendance requirements must give credit to those who worked during the meeting.

> "[I]f members must work during the time when meetings are held, a requirement of attendance at a given number of meetings may be unreasonable in its application, when there is not adequate provision for excused absences for members who are working at the time meetings are held."[8]

In short, the union was being faithful to the *Secretary's* own premise, by providing credit to those who worked during meetings.[9] Moreover, disqualifying a whole segment of the membership simply because they must work during meetings would be unreasonable indeed. Members with the opportunity to attend meetings are obviously in a different class than members who are prevented from attending by the necessity to work. The former, having no work conflict which precludes their attendance, have no excuse for failing to attend meetings. The work excuse provision does not thereby become a plum designed to benefit members whose work conflicts with meetings. It is simply an exception to the meeting attendance rule made out of the necessity to enable *every member to qualify,* and indeed, because the Secretary of Labor insists that it be provided.

The meeting attendance rule is thus a reasonable rule designed to achieve legitimate purposes. The work exception is not proof that those purposes are illegitimate, but it is a practical adjustment made to assure that every member is able to qualify for union office. In the Steelworkers Union every member *is* able to qualify.

---

7. This contention was not made in this case until now. The Secretary appears to be quite schizophrenic on the issue. At one point (Br. 17, n. 9), he seems to complain that the excuse provision qualifies too few members. Later (Br. 28), the Secretary carps because it qualifies any at all.

8. Appendix in *Hodgson v. Local Union 6799, United Steelworkers of America,* October Term, 1970, No. 655 at 196-200. For the Court's convenience, these excerpts from the record in *Local 6799* are included in an appendix to this brief.

9. In making this point, the Secretary cites the testimony of his employee to the effect that members don't need meetings to acquire knowledge of the full range of union affairs because they can acquire it at the workplace (Br. 28). On cross examination, however, the employee acknowledged that his views in this regard differ from those of the Secretary (App. 42-43). In any case, most employers, we suspect, believe that the workplace is for work and not for seminars on union affairs.

CONCLUSION

For the reasons set forth above and in our first brief, the decision below should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

[Defendant's Exhibit O]

Mr. Woodrow W. Donald
539 Coal Street
Prichard, Alabama 36610

October 12, 1967

Dear Mr. Donald:

Your letter to the National Labor Relations Board concerning the imposition by your union of certain qualifications on members seeking election to union office has been referred to this Office for reply. The Office of Labor-Management and Welfare-Pension Reports is charged with the administration and enforcement of certain sections of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). This Act requires the reporting and public disclosure of the financial affairs and administrative practices of labor organizations and also sets certain minimum standards for the conduct of elections of union officers.

From the facts in your letter, it appears that the members of your local union work on rotating shifts around the clock; that union meetings are held on the first and third Tuesday of the month at 7:00 P.M.; and that the union has established as a qualification for candidacy attendance at fifty percent of such meetings in each calendar year.

Section 401(e) of the LMRDA provides that in an election required by the Act which is held by secret ballot, every member in good standing shall be eligible to be a candidate and to hold office. However, the eligibility of members to be candidates for union office is subject, among other things, to such "reasonable" qualifications

as the labor organization may wish to include in its constitution and bylaws, as long as such qualifications are uniformly imposed on all the members.

The question of whether a particular qualification is reasonable is a matter which often is not susceptible of precise definition. For example, a qualification restricting eligibility for union office to members who meet a requirement involving attendance at a certain number of union meetings during a given period is not an unusual qualification. Ordinarily, such a qualification would be a reasonable means of encouraging participation in the affairs of the union. However, there may be circumstances in which an attendance requirement would not be reasonable. For example, if members must work during the time when meetings are held, a requirement of attendance at a given number of meetings may be unreasonable in its application, when there is not adequate provision for excused absences for members who are working at the time meetings are held.

Since you did not state the name of your union, we were unable to check its constitution and bylaws. Generally, a provision requiring attendance at fifty percent of the union's meetings for a period of one calendar year would not be considered by this Office to be unreasonable. However, if the work shifts are rotated in such a way as to make the effect of the provision one which would require more than fifty percent attendance during the year, serious question would be raised as to the reasonableness of the rule. Thus, if members work on the night shift on eight of the 24 scheduled meeting nights, it would be possible for them to attend a maximum of only 16 of these meetings. Eligibility predicated on attending 12 of these meetings during the year may

under such circumstances not be considered reasonable unless the absences due to night work are excused.

I am enclosing a copy of the Act, the Regulations and Interpretative Bulletins, and the pamphlet, "Electing Union Officers," for your information.

Should you have further questions about the Act, it may be convenient for you to contact our Atlanta Area Office. The address is Room 317, 1371 Peachtree Street, N. E., Atlanta, Georgia 30309. The telephone number is Code 404, 526-5351.

Sincerely yours,
FRANK M. KLEILER
Director

Enclosures

[Defendant's Exhibit P]

October 27, 1967

Honorable Jack Edwards
House of Representatives
Washington, D. C. 20515

Dear Congressman Edwards:

This is in reply to your referral of October 19, 1967, of a letter from a constituent describing rules governing eligibility to run for office in a local union. You have asked the Department of Labor for an opinion on whether the facts stated in this letter constitute a proper basis for action by the Department.

From the facts in your constituent's letter, it appears that his complaint centres around an eligibility qualification in his International Union's constitution and bylaws which requires that a member attend 50% of the local's regular meetings during the six-month period prior to nominations in order for the member to be eligible to be nominated to run for local office. In addition, your constituent complains that a majority of the local members work a rotating shift, thereby making it difficult for the members working during the time of the meeting to satisfy the 50% attendance requirement.

As you may know, Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), sets forth certain minimum standards for the conduct of elections by union officers. Section 401(e) provides that in an election required by the Act which is held by the secret ballot every member in good standing shall be eligible to be a candidate and to hold office. However, the eligibility of members to be candidates

for union office is subject, among other things, to such "reasonable" qualifications the members of the labor organization choose to embody in their constitution and bylaws, as long as such qualifications are uniformly imposed on all members.

The question of whether a particular qualification is reasonable is a matter which often is not susceptible of precise definition. For example, a qualification restricting eligibility for union office to members who meet a requirement involving attendance at a certain number of union meetings during a given period is not an unusual qualification. Ordinarily such a qualification would be a reasonable means of encouraging participation in the affairs of the union. However, there may be circumstances in which an attendance requirement would not be reasonable. For example, if members must work during the time when meetings are held, a requirement of attendance at a given number of meetings may be unreasonable in its application when there is not adequate provision for excused absences for members who are working at the time meetings are held.

Since we do not know your constituent's name or the name of his union, we were unable to examine the local's constitution and bylaws or the previous election complaint he filed with the Secretary. Generally, a provision requiring attendance at 50% of a union's meetings for a period of six months prior to nominations would not be considered by this Office to be unreasonable. However, if the work shifts are rotated in such a way as to make the effect of the provision one which would require more than 50% attendance during the six-month period, serious question would be raised as to the reasonableness of the rule.

As you can see, it would be impossible on the basis of the information contained in your constituent's letter to give you a definite opinion on whether the facts in his letter constitute a proper basis for action by the Secretary.

The Office of Labor-Management and Welfare-Pension Reports (LMWP) is charged with the administration and enforcement of certain sections of the LMRDA, including the election provisions of Title IV. Pursuant to section 402(a) of Title IV, a union member may request the Secretary of Labor to conduct an examination of his union's election procedures as applied in a particular election if, after the election occurred, he has exhausted all available internal union remedies provided for appealing union election procedures or has invoked these remedies without receiving a final decision within three months. The Secretary may bring suit to have the challenged election set aside if, during his investigation of the member's complaint, he finds probable cause to believe a violation of Title IV of the Act has occurred and that the violation may have affected the outcome of the election.

I hope your constituent will find this information helpful. If he should desire any further assistance or information concerning the LMRDA, please advise him to feel free to contact our Atlanta Area Office which is located at Room 317, 1371 Peachtree Street, N.E., Atlanta, Georgia 30309. The telephone number is Area Code 404, 526-5351.

Sincerely yours,

SAMUEL V. MERRICK
Special Assistant for
Legislative Affairs

Supreme Court, U. S.
FILED
MAY 17 1976
MICHAEL RODAK, JR., CLERK

No. 75-657

In the

Supreme Court of the United States

October Term, 1975

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioners,

v.

WILLIAM J. USERY, SECRETARY OF LABOR,
Respondent.

On Writ of Certiorari to
The United States Court of Appeals
For the Seventh Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO,
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Respondent.

On Writ of Certiorari to
The United States Court of Appeals
For the Seventh Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed on behalf of the American Federation of Labor and Congress of Industrial Organizations, a federation of 111 national and international unions having a total membership of approximately 14,000,000 men and women, with the consent of the parties as provided for in Rule 42(2) of this Court's Rules.

ARGUMENT

I

Section 401(e) of the Labor-Management Reporting and Disclosure Act ("LMRDA") provides that labor organiza-

tions may set "reasonable qualifications uniformly imposed" for members in good standing who wish to be "candidates and to hold office." There is no contention in this case that the meeting attendance rule in question was not "uniformly imposed". Nor, it seems, has the Secretary of Labor or the Court of Appeals identified any reason why any member of Local 3489 who chose to do so was precluded from satisfying the requirements imposed.[1] Thus, the question of general import posed by this case is what principles are to govern a determination that a union candidacy eligibility requirement is "reasonable" when the requirement does not in terms render ineligible for office any member choosing to conform his behavior to that required for candidates.[2]

We believe that a careful consideration § 401(e), of the only case in this Court construing the reasonable qualifications for candidacy provision of that section of (*Wirtz* v. *Hotel Employees, Local 6,* 391 U.S. 492), and of Title IV of

[1] The Secretary has attacked the rule on its face, without attempting to demonstrate any reason why members in general could not satisfy the requirement if they so desired. Therefore, this case must be considered on the premise that there was nothing inherent in the rule or the circumstances surrounding its application which precluded members from qualifying under it. (See pp. 11-12, *infra.*)

[2] The rule at issue in *Wirtz* v. *Hotel Employees, Local 6,* 391 U.S. 402, was not this type of rule. Rather, a member fully dedicated to participation in union affairs and desiring to run for the offices covered by the *Hotel Employees* prior office-holding rule could be prevented from running not by any action or inaction on his part but by the actions of the electors and of those with the power to fill offices by appointment. While this distinction certainly does not render inapposite the basic principles stated in *Hotel Employees,* it does mean that the result in this case cannot follow *a fortiori* for the conclusion in *Hotel Employees.* (See pp. 12-17, *infra.*)

the LMRDA generally, demonstrates that a qualification on candidacy is reasonable if three basic standards are met: First, the qualification is such that it affords all members who desire to run for office an opportunity by his or her own action to meet the eligibility requirements.[3] Second, the qualification serves a legitimate interest of the union as an institution (where limiting the pool of potential candidates is not a legitimate interest in itself). Third, the qualification does not require a member seeking to satisfy it to unnecessarily disrupt his daily life or otherwise seriously inconvenience himself.

a. The relevant portion of § 401(e) on the one hand imposes as public law a requirement designed to assure broad access of union members to control of union affairs and on the other hand recognizes that members of unions, in the exercise of the very democrative self-government the Act is designed to assure, may perceive the need to set requirements for office-holding beyond mere membership in good standing. The structure of § 401(e) thus reflects in miniature an apparent tension reflected in the debate that formed Title IV of the Act, between setting absolute, detailed standards to which unions must adhere in order to prevent perceived abuses of power seen within the gover-

[3] We do not posit that a rule is *not* reasonable and therefore valid under § 401(e) if it does not meet this requirement. Rather, there may well be rules which serve union interests important enough, and whose impact is limited enough, that they are reasonable even though they cannot fairly be met by any determined member. See, e.g., 29 C.F.R. § 452.46, 452.47, 452.48. We suggest only that where this standard *is* met, an impact showing is irrelevant (see pp. 12-17, *infra*), and the union need demonstrate only some legitimate independent union interest served by the rule strong enough to outweigh any inconvenience it might pose.

nance of a few unions, and setting only minimal standards of democracy while permitting unions generally to set their own rules of self-government.[4] Yet the tension is more apparent than real. For, Congress legislated upon the presupposition that the two goals—assurance of union democracy and independence of union self-governance—were compatible. Title IV rests on the twin premises that "[g]iven the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully compe[illegible] o regulate union affairs," (S. Rep. No. 187, 86th Cong., 1st Sess., 5), and that "any attempt to prescribe detailed procedures and standards for the conduct of union business would weaken rather than strengthen the labor movement, * * * (*id.*)[5]

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[4] See, e.g., *Hodgson* v. *Steelworkers, Local 6799,* 403 U.S. 333, 338-339: "Examination of the relevant legislative materials reveals a clear congressional concern for the need to remedy abuses in union elections without departing needlessly from the longstanding congressional policy against unnecessary governmental interference with internal union affairs;" *Hotel Employees, supra,* 391 U.S. at 496: "[T]he congressional concern to avoid unnecessary intervention was balanced against the policy expressed in the Act to * * * [assure] that union elections would be conducted in accordance with democratic principles;" "The shocking abuses revealed by recent investigations have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine union self-government within the labor movement nor to weaken unions in their role as the bargaining representatives of employees." S. Rep. No. 187, 86th Cong., 1st Sess., 5 (1959). *See also id.*, pp. 5-7; *Wirtz* v. *Glass Bottle Blowers Assn.,* 389 U.S. 463, 470-471.

[5] There is no legislative history on the precise question of what qualifications on the right to run for and hold office are "reasonable".

In *Hotel Employees, supra,* this Court first addressed, in light of this general duality of Title IV, the considerations which are relevant to determining whether a given candidacy regulation is "reasonable". Noting that "revelations of corruption, dictatorial practices and racketeering in some unions investigated by Congress indicated a need to protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and through the election process, to keep the union leadership responsive to the membership," (*id.* at 497), the Court declared that "whether [a given regulation] is a 'reasonable qualification' * * * must be measured in terms of its consistency with the Act's command to unions to conduct 'free and democratic' union elections" (*id.* at 499). Because Congress' concern was to end "abuses of entrenched leadership" (*id.*), it interdicted in § 401(e) those "*unduly* restrictive candidacy qualifications" (*id.*; emphasis supplied) which can lead to this result. And, since "candidacy qualifications which substantially deplete the ranks of those who might run in opposition of incumbents" (*id.*) operate to entrench those incumbents, the *Hotel Employees* Court held that the rule before it in that case, which of necessity created a limited pool from which candidates could be drawn, was unreasonable under § 401(e).

The regulation before the Court in the instant case, however, does not "substantially deplete the ranks of those who might run in opposition to incumbents". Rather, any member willing to devote the time to union affairs prescribed by the rules can qualify as a candidate. Thus, the regulation here imposes no limit on the number of members opposed to the incumbents who can qualify; and, it neither discriminates against dissidents nor favors incumbents. In-

deed, such a requirement disqualifies no one. Any ineligible member assumes that status by choice and not because he is precluded from becoming a candidate. Since the Act was not designed to assure that any member or members actually become officers but, rather, that all union members who desire to become candidates for office will have an opportunity to do so, there is no threshold inconsistency between this rule and the permission of § 401(e), as there was in *Hotel Employees*.

(b.) This is not to say that a union may impose *any* requirement upon members desiring to become officers which it is not impossible for them to meet of their own accord. Rather, we believe that the reasonableness standard of § 401(e) imposes the requirement that any qualification set does forward a legitimate interest of the union. In addition, the rule must be reasonably adapted to the interest served, so that it does not require unnecessary disruption of the life of the potential candidate. Both of these requirements are implicit in the "reasonable" language of § 401 (e), and in the general goal of Title IV, "free and democratic" elections.

As the Secretary has consistently recognized, the central goal of a meeting attendance rule, "to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization," is a legitimate one (29 C.F.R. § 452.38). Indeed, such a rule is in furtherance of Title IV's purposes of promoting participation of rank-and-file members in union self-government and keeping leadership responsive to the members, for it encourages members generally to remain involved in union affairs continually and not merely at election time. Further, the rule assures that candidates for office, because they will have

participated in local union meetings on a continuous basis, will have been exposed to potential voters and, in all probability, have a "record" of positions on union matters upon which they can be judged. Thus, the purposes of a meeting attendance rule are not only legitimate, but are intended to assure precisely the effective, broad-based internal democracy sought by Congress in enacting the LMRDA.[6]

Indeed, the goals of a meeting attendance rule are quite similar to the purposes underlying durational residency requirements for candidates for state office, which have repeatedly been upheld by this Court in affirming federal district courts. *Sununu* v. *Stark*, 383 F. Supp. 1287 (D. N. H.) (seven year residency for state senatorial candidate), *affirmed*, 420 U.S. 958; *Kapanaux* v. *Ellison*,

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[6] The Court of Appeals seemed to read *Hotel Employees* as declaring such goals necessarily inadequate to justify any candidacy qualification. (520. F.2d, at 521.) But surely no such indictment of all rules passed to assure interested, committed officers was intended. As we show below, aiding the choice of the voters by minimal rules toward this end is not only consistent with but prevalent in American democracy.

Indeed, one would expect that such rules, when not "unduly restrictive," are precisely those Congress intended to permit. The problem with the *Hotel Employees'* rule, as the Court stressed, was that in practical effect "it was not possible to qualify except with the blessing of the [incumbents]" (391 U.S. at 502), and that the attempt to justify the rule as assuring well-qualified candidates was therefore equivalent to a declaration that assessment of qualifications was not within the competence of the electorate but, instead, had to be determined by a small, self-perpetrating group. Since conforming with the regulation here is subject to no control or influence by any other member or officer, it serves as a legitimate test of the quality sought and not one infected by a quality of elitism antithetical to democracy.

419 U.S. 891 (memorandum opinion) (five year residency for state gubernatorial candidate); *Chimento* v. *Stark*, 353 F. Supp. 1211 (D. N.H.) (seven year residency for state gubernatorial candidate), *affirmed*, 414 U.S. 802; *Hadnott* v. *Amos*, 320 F. Supp. 107 (M.D. Ala.), *affirmed*, 401 U.S. 968. These rules which have been adopted by almost every state, (see *Chimento*, 353 F. Supp. at 1217; *Sununu*, 383 F. Supp. at 1290) are designed to assure familiarity with the state's problems, to provide the electorate with an opportunity to become acquainted with and adjudge the candidate for a period prior to the election, and to assure that no individual without a demonstrated prior interest in the state can attempt to control its government. (*Chimento*, 353 F. Supp. at 1215; *Sununu*, 383 F. Supp. at 1290.)[7] And, some of these opinions (*Chimento, supra; Hadnott, supra.*) found the residency rules not only rational but necessary to interests deemed *compelling*, a more exacting standard than the word "reasonable" could possibly connote.

Also parallel in intent to the meeting attendance rules at issue here are the candidacy qualification rules for federal office contained in the United States Constitution, Article I §§ 2[8] & 3,[9] Article II § 1.[10] These qualifications were

[7] In analyzing the residency rules it has been noted, somewhat similarly to the discussion above regarding the rule here at issue, that such rules do not in actuality serve to disqualify anyone from holding office but, instead, impose a waiting period for eligibility. *Sununu*, 383 F. Supp., at 1293 (opinion by two of three judges).

[8] "No Person shall be a Representative who shall not have * * * been seven years a Citizen of the United States and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

[9] "No Person shall be a Senator who shall not have * * * been nine Years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that state for which he shall be chosen."

[10] "No person * * * shall be eligible to the Office of President * * * who shall not have * * * been fourteen years a Resident of the United States."

imposed precisely to ascertain that the persons elected would be thoroughly familiar with the country whose laws they were to enact and enforce, and entirely dedicated to its best interests. See *Federalist and Other Constitutional Papers*, Scott Foreman & Co., Chicago, 1898, Vol. I, No. LXII, p. 339; *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, W. W. Norton & Co., 1966, pp. 406-47.

Since "Congress' model of democratic elections [in enacting Title IV] was political elections in this country" (*Hotel Employees*, 391 U.S., at 504), the fact that both the state and federal governments have perceived the need for rules which delay eligibility for public office until some specified minimum criteria indicating a commitment to and familiarity with the relevant jurisdiction has been met surely suggests that Congress regarded such a goal as consistent with union democratic self-government and, therefore, did not consider rules reasonably in furtherance of such goals as violative of § 401(e).[11]

[11] We do not suggest that meeting attendance rules are the precise equivalent of durational residency requirements in public elections, or that precise equivalency to a requirement for election to public office is necessary to sustain a union candidacy regulation as "reasonable." Rather, as the Secretary in his interpretive regulations has recognized (see 29 C.F.R. § 452.36, 452.37(b), 452.39, 452.41, 452.42, 452.13, 452.44, 452.47, 452.43, 452.50), the union context may render reasonable rules which either have no parallel in the context of the general electorate or would not be reasonable in that context. Conversely, rules reasonable with respect to elections for public office may not be so with regard to union office.

Further evidence that Congress did not intend to invalidate as unreasonable meeting attendance rules may be gleaned from the fact that international unions representing about one in five union members in a Department of Labor study imposed or expressly permitted such requirements for candidacy for local union office at the time of the Act. (See, Department of Labor, *Union Constitutions and the Election of Local Union Officers* 12 (1965).) By 1964, international unions representing about one third of such members imposed or expressly permitted such requirements. Since there is not a word in the legislative history suggesting dissatisfaction with these rules, and since Congress legislated to prevent "existing evils" perceived as "confined to a few unions," (S. Rep. No. 187, 86th Cong., 1st Sess., 5), Congress may not be presumed to have regarded as facially invalid regulations included in a large number of constitutions of major unions. To paraphrase *Musicians* v. *Wittstein*, 379 U.S. 171, 78: "In light of the fact that then as now many large unions had provisions for [meeting] attendance rules," it is very clear that [such rules were] not thought to be one of the abuses or forms of misgovernment." In contrast, the *Hotel Employees* opinion noted that the by-law in

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For example, we would expect that residence in a particular place for a given length of time would *not* be a reasonable union rule for candidates in the ordinary circumstance, since union affairs ordinarily concern the work place, not the home.

However, the fact that almost all states and the framers of the federal Constitution deemed necessary some limitations on candidacy designed to assure prior involvement with the relevant body politic, but at the same time differed upon the precise requirements imposed toward this end, surely indicates that a varient on the same theme reasonably adapted to the peculiar needs of unions is not inconsistent with fundamental notions of democracy.

question there was "virtually unique." (391 U.S. at 505.) Therefore, unless a meeting attendance rule as imposed or applied can be shown to be substantially more onerous than required to achieve its goals, it should be approved as the paradigm of the kind of rule permitted by § 401(e).

(c.) Recognition that meeting attendance rules must be regarded as presumptively valid does not, of course, derogate from the possibility that they can, combined with other factors present in certain circumstances, operates such that even an interested union member could not meet the requirement. For example, the excuse provisions could be so narrow as to disqualify members for whom compliance would be impossible; the length, time, frequency or location of the meeting could, similarly, render it quite difficult for most members to attend; or the number of meetings which must be attended within a particular time span could be such that, given the ordinary press of daily work, even a member committed to full participation in union affiairs would not ordinarily be able to attend the requisite number of meetings.

Thus, the Secretary could, in our opinion, consistently with § 401(e) set out guidelines delineating the *abuses* of meeting attendance rules which could render them unreasonable. In this case, however, the Secretary has not pointed to any particular reason why this meeting attendance rule, or the circumstances in which it was applied, rendered compliance with the standard of behavior prescribed beyond the means of any union member. Rather, both the Secretary and the Court of Appeals point to the percentage of members who did not choose to qualify as making manifest the rule's unreasonableness. We regard this "effects"

approach as entirely impermissible in the present context. In the following section, we explain why this test, although sensible in the *Hotel Employees* situation, the only context in which this Court has applied it, is entirely unworkable and at odds with the manifest purposes of § 401(e) when applied to a rule like the present one which imposes not an insuperable barrier to candidacy but a standard of behavior which can be met by members choosing to do so.

II

The Court of Appeals attributed controlling significance to one sentence of the *Hotel Employees* opinion: "Plainly, given the objective of Title IV, a candidacy limitation which renders 93 percent of union members ineligible for office can hardly be a 'reasonable qualification.'" (391 U.S., at 502.) For, the court below, after quoting that sentence, stated:

> "Here the meeting attendance rule disqualified 96.5 percent of the Local Union's membership from office, so that it cannot be deemed a reasonable qualification either. We need not decide whether the 18 of 36 rule is *per se* unreasonable because its effect of servely restricting the number of potential candidates for union office shows it to be clearly unreasonable in this case * * * [I]f a very high percentage of the membership is disqualified from seeking union office by a rule, as was the case here, that fact alone may justify a finding that the rule is unreasonable." (520 F.2d 516, 519-520.)[12]

[12] The Court of Appeals did devote some discussion to the rule apart from its effects, 520 F.2d at 520-521. However, in view of the sentences quoted in the text, there is no indication whatever that it determined the rule unreasonable entirely apart from its effect, or that it would adhere to its judgment on the basis of the three-part test we deem proper.

We cannot agree, however, that the Court in *Hotel Employees* held that whenever a substantial percentage of members is not eligible, the union's qualification rule is *per se* unreasonable.

As applied to a rule such as that in *Hotel Employees*, the test is entirely consistent with the Act. For, in *Hotel Employees* the effect of disqualifying a large proportion of the membership was inherent in the structure of the rule itself, since an absolute bar to eligibility was created. Therefore, the general effect was predictable at the time the rule was adopted, although of course the precise number of members who would qualify was not certain. Further, the effect in question was a *permanent* bar to holding certain offices unless an event outside the direct control of the member occurred. While Congress may have been willing to tolerate rules which rendered permanently and necessarily disqualified to hold office a few union members, it is reasonable to conclude that it did not intend to place its imprimatur upon rules which on their face deprived most of the potential opposition of *all* opportunity to seek to unseat incumbents.

To sanction an effects test with regard to rules which present a fair opportunity for every member who wishes to do so to qualify for candidacy would be an entirely different matter. As noted above, such rules, when in furtherance of a legitimate objective and not unduly onerous are precisely the sort of candidacy qualifications which Congress intended to permit. Yet, the test forwarded by the Secretary and adopted by the Court of Appeals would

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Petitioners,

v.

William J. Usery, Secretary of Labor,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

At oral argument in this matter, the Secretary of Labor brought this Court's attention to a recent decision by the Court of Appeals for the First Circuit in a case involving a meeting attendance rule of another union. *Usery v. Local Division 1205, Amalgamated Transit Union,* No. 76-1235, ... F.2d .... (1st Cir., slip opinion filed November 17, 1976). In this Supplemental Brief, we show briefly that the Transit Union's local rule in that case is significantly different from the Steelworkers' rule and that the First Circuit, assuming its decision to be correct, rested on grounds largely at odds with the position of the Secretary of Labor here.

The Amalgamated Transit Union is one of those international unions which, by constitution, grants its local unions the option of adopting meeting attendance requirements. The bylaw adopted by Local Division 1205 provided that candidates for local office must have at-

tended not less than six regular meetings each year during the twenty-four months prior to the election.

There are a number of obvious differences between this case and *Local Division 1205*. First, the burden imposed on members desiring to attend union meetings was much greater there than it was here. Members were based in Boston, Massachusetts, Portland and Bangor, Maine, Hartford and New Haven, Connecticut and Providence, Rhode Island but the Local's meetings were held only in Portland and Boston, necessitating travel over substantial distances. In the present case, by contrast, the meeting was held at a local union hall a few minutes away from the one plant at which all of Local 3489's members were employed. As for the rule itself, in *Local Division 1205,* attendance was required at one-half the meetings in *each* year of the term rather than *over* the entire term.[1] This requirement for compliance separately in each year weighed heavily in the First Circuit's decision.

The First Circuit held the Local Division 1205 rule to be unreasonable. In doing so, however, it rested on grounds which not only differ from those advanced here by the Secretary but actually undercut the Secretary's position in this case. Thus, for example, the Secretary places primary emphasis on the percentage ineligible. The First Circuit, though it considered that fact, refused to give it "conclusive weight" as the Secretary asked. Seemingly more important to that court was the question of how burdensome was the requirement, a test under which, we submit, the petitioners herein must

1. The Steelworker term of office is three years while the term of office in Local Division 1205 is two years.

prevail. The Steelworkers' rule is surely far less burdensome than the nominating petition requirements whose constitutionality has been sustained here, e.g., *Jeness v. Fortson,* 403 U.S. 431 (1971); *American Party of Texas v. White,* 415 U.S. 767 (1974).

The First Circuit also relied heavily on a provision in the Secretary's Interpretive Manual which, at the time of the challenged election, sanctioned rules requiring a member to attend regular meetings for twenty-four months prior to the election.[2] The bylaw requiring members to attend one-half of the meetings *each* year was significantly more burdensome, said the court, than the rule sanctioned by the Secretary.

As this Court is well aware, the Secretary in this case has abandoned all reliance on the provision in his manual which sanctioned two year rules (Resp. Br. 7). Here, the Secretary urges the current interpretive regulation adopted in 1974 which, while recognizing that it is reasonable for unions to establish meeting attendance requirements and that such requirements serve valid union purposes (insuring that candidates have a demonstrated interest in and familiarity with the affairs of the organization), nevertheless warns that such rules may become unreasonable "in the light of all the circumstances of the particular case" including the impact of the rule, i.e., "the number" ineligible (Resp. Br. 15).

2. The regulation went on to indicate that such an attendance requirement could be "unreasonable" if attendance presented an unusual degree of diffiiculty for a significant proportion of the membership. The court in *Local Division 1205* found it unnecessary to decide whether travel presented an unusual degree of difficulty there because it held the rule invalid on other grounds.

The difference between the regulation found compelling by the First Circuit and the successor provision championed by the Secretary here underscores another point. The union in *Local Division 1205* could easily have determined that its bylaw, because it required attendance at six meetings in each year, did not comply with the Secretary's two-year regulation. In marked contrast, no union can know in advance whether its meeting attendance requirement complies with the Secretary's current regulation. As we indicated in our reply brief (p. 3), however, that knowledge is absolutely essential if the Union is to conduct a valid election. This is so because local unions are required by section 401(e), 29 U.S.C. §481(e) to conduct elections in accordance with the constitution and bylaws insofar as they are not inconsistent with the Act. Accordingly, the *failure* to apply a constitutionally mandated meeting attendance rule by qualifying a candidate who has not complied therewith, would invalidate the election unless it was ultimately determined that the rule could not be lawfully applied in that election because it disqualified too many potential candidates. Because the Secretary's current regulation articulates no standard, unions cannot with any reasonable degree of assurance determine whether a meeting attendance rule *must be* enforced or must be disregarded. Thus, unless that regulation is disapproved, unions retain any meeting attendance rule at their peril although such rules "insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization. . . ." (Resp. Br. 15, 29 C.F.R. 452.38).

For the reasons set forth above, petitioners respectfully submit that the First Circuit's decision in *Usery v. Local Division 1205, Amalgamated Transit*

Union is distinguishable from the present case and does not support the position taken here by the Secretary of Labor.

Respectfully submitted,

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